

1 VIRGINIA:

2 IN THE COUNTY OF WASHINGTON

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5 VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY

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7 VIRGINIA GAS AND OIL BOARD

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14 JULY 20, 1999

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BENNY WAMPLER: We'll go ahead and call the meeting to order. Good morning. My name is Benny Wampler. I'm Deputy Director for the Virginia Department of Mines, Minerals and Energy and Chairman of the Gas and Oil Board; and I'll ask the Board members to introduce themselves.

MASON BRENT: My name is Mason Brent. I'm from Richmond and I represent the Oil and Gas Industry.

MAX LEWIS: My name is Max Lewis and I'm from Buchanan County and I repre...I'm a public member.

SANDRA RIGGS: I'm Sandra Riggs with the Office of the Attorney General and I'm here to advise the Board.

DENNIS GARBIS: My name is Dennis Garbis. I'm a public member from Fairfax County.

TOM FULMER: My name is Tom Fulmer. I'm with the Department of Mines, Minerals and Energy.

BENNY WAMPLER: The first item on the agenda is that the Board on its own motion will consider adoption and implementation of recommendations from the Virginia Gas and Oil Board working group concerning procedures for withdrawal of funds from the Gas and Oil Board's escrow account. The Board asked me to chair the committee following the passage of Chapter 122 and subsequent approval by the governor of

1 that law with some changes that we wanted to determine better
2 ways to not only comply with that law, but to improve
3 procedures that we might have...otherwise have. We convened
4 the working group and I'll ask Mr. Fulmer to report out to
5 the Board on the results of that.

6 TOM FULMER: Mr. Chairman and members of the Board,
7 I come before you today on behalf of your regulatory work
8 group with the procedural recommendation by them. As you
9 remember...may remember, in late 1998 and early 1999, the
10 Board had been faced with petitions for disbursement of funds
11 from the escrow account by various parties to sign agreements
12 between the conflicting parties. To this end, the Board
13 authorized the convening of a regulatory work group to look
14 into various means by which such petitions could be handled
15 whether by the regulatory process or through a procedural
16 process. Although this was not the only aspect with which
17 the Board granted approval for the group to explore, it is
18 the main focus of my presentation today.

19 On January 19th, 1999 the work group was convened
20 by Mr. Wampler here at the 4-H Center. Various topics was
21 discussed including upcoming RFP for the escrow agent,
22 brochures which would explain the pooling process and the
23 disbursement of funds, tracking requirements and various

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1 other appropriate topics. It was the consensus of the group
2 at the first meeting that the promogation of regulation
3 should be the last option to take. The staff agreed to take
4 the consensus of the group and return back to the group a
5 draft recommendation for the review and comment.

6 In March of this year, HB1921 was signed into the
7 law and became effective on July the 1st. This bill which
8 was introduced and patroned by Delegate Bud Phillips required
9 the Board to order disbursement of funds within thirty (30)
10 days from the escrow account. Once the Board has received
11 notice of the Court determination, or a petition filed by
12 parties who have reached and signed an agreement between the
13 parties for the settlement of conflicting claims. You should
14 have a copy of this piece of legislation in your...in your
15 documents that we sent to you for this month's agenda. If
16 you have reviewed it and have any questions, certainly I'll
17 be glad to answer any questions I can.

18 Considering the pending enactment of the
19 legislation, the staff drafted a recommendation to the work
20 committee for their review. On June 15th, the staff met with
21 the work group committee and presented its draft
22 recommendation for the implementation of HB1921. After
23 reviewing some minor changes to the recommendation, the work
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1 group approved the recommendation for presentation to the
2 Board. Included in your package is a copy of the approved
3 recommendation with the changes suggested by the work
4 committee and that document is starting with this memorandum.
5 You should all...all should have a copy of that.

6 I would like...I would like at this time, if the
7 Board so desires, to review the recommendation with you.
8 Also in the package is a flow chart. It simulates the flow
9 of the steps required to get to the point of an order for
10 disbursement of funds. The flow chart essentially follows
11 the proposals on page two of the recommendation. Essentially
12 on page two of the recommendation, it starts out with the
13 proposed procedures regarding petitions for withdrawal of
14 funds from the escrow accounts established for coalbed
15 methane and gas drilling units.

16 The first recommendation was a fee of \$100 to cover
17 the cost of processing and handling. Must...must accompany
18 petitions for the withdrawal of funds filed by conflicting
19 claimants with the Board pursuant to current regulations.
20 The second recommendation, that only those petitions which
21 contain the written agreement, or the decision by the Court,
22 be considered by the Board as a basis of...for disbursement
23 of funds in accordance with Section 45.1-361.22 Subsection 5,

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1 which is essential HB1921. The third recommendation, that
2 parties file in the petition for the withdrawal of funds be
3 required to give notice to all conflicting claimants within
4 the tracts subject to the petition. The fourth
5 recommendation, that the events triggering the commencement
6 of the thirty (30) day period be the date of the hearing of
7 the petition by the Board for the withdrawal of funds.
8 Recommendation number five, once the staff, or the Board,
9 receives a petition for withdrawal of funds, it will be
10 reviewed for completeness in action.

11 Upon completion of this review, the staff will send
12 out a three part letter with its findings. The letter will
13 address the following: Part One, address for the petitioner's
14 action from documents on file with the Board from the unit
15 operator pooling order (inaudible) etcetera, verified to the
16 petitioner the specific units which are the subject of the
17 petition as well as the tracts within the specified drilling
18 units which are the subject of the proposed disbursement and
19 verified the percentage of interest in the arrogate within
20 each unit which the unit operator shows attributable to the
21 petitioner's conflicting interest in the units. Notify the
22 petitioner that they must warrant and represent for those
23 tracts that are the subject of the petition to the Board at

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1 the hearing, that the information set forth in the operator's
2 filings are correct and constitute the bases for the
3 petitioner's quest for disbursement. To the extent that the
4 petition is not complete, or to the extent information
5 contained in the petition is inconsistent with the
6 information provided by the unit operator, the letter will
7 point out such inconsistencies and request that the
8 petitioner provide any missing information, or to reconcile
9 the differences between their petition and the supplemental
10 order.

11 Part B, part two of the unit operator's action.
12 Notify the unit operator of the request for disbursement from
13 the escrow account and that they have been added as a party
14 to the petition. Require that the unit operator file with
15 the Board an accounting of funds placed on deposit and such
16 as applicable unit escrow accounts on a tract by tract basis,
17 and request that, if appropriate, the operator file an
18 amended affidavit in support of an amended supplemental order
19 to reflect any changes in ownership since the filing of the
20 last supplemental order.

21 Part C, part three for the escrow agent. Notify
22 the escrow agent of the pending petition as well as the date
23 and time of the hearing on the petition. Instruct the escrow
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1 agent to contact the unit operator to reconcile the unit's
2 escrow agent on a tract by tract basis including the
3 allocation of accrued interest and fees.

4 Once these letters have been sent out, and you go
5 back again, and I just want to mention that in part four of
6 the recommendation, that the events triggering the
7 commencement of the thirty (30) day period would be the date
8 of the hearing of the petition by the Board. So, at that
9 time at the hearing date then, the Board within thirty (30)
10 days, if everything is correct, would then order...issue an
11 order for disbursement. And that is the recommendation of
12 the work group and I would like to request that the Board
13 approve the procedur...the proposed procedures for
14 implementation of Section 45.1-361.22 Subsection 5 of the
15 Virginia Gas and Oil.

16 BENNY WAMPLER: I'd ask the people here if anyone on
17 the work committee would like to say anything at this time
18 before the Board takes action?

19 (No audible response.)

20 BENNY WAMPLER: Mr. Fulmer represented there was a
21 general consensus of these procedures. The staff have
22 followed these procedures leading into today's hearing as a
23 draft to get an ideal of how it might expedite the work of
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1 the Board. Do you have any questions?

2 (No audible response.)

3 BENNY WAMPLER: Is there a motion to accept these

4 procedures and approve these procedures?

5 MASON BRENT: I make the motion that we approve

6 these procedures.

7 DENNIS GARBIS: I'll second.

8 BENNY WAMPLER: Second. Any further discussions?

9 MASON BRENT: Just...just on further discussion.

10 BENNY WAMPLER: Yes.

11 MASON BRENT: The...the thirty (30) day...the

12 commencement of the thirty (30) day period, and pardon me for

13 being slow on this, but is that subsequent to this part one,

14 two, three?

15 TOM FULMER: Okay. I don't understand your

16 question.

17 MASON BRENT: Well, and I think I know the answer,

18 the part one, two, three that has to be accomplished before

19 the---?

20 TOM FULMER: Right. Right.

21 MASON BRENT: ---commencement of the hearing

22 (inaudible)?

23 TOM FULMER: Once we receive the petition, then the

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1 letter will go out. The letters will go out.

2 BENNY WAMPLER: In other words, they're trying to
3 resolve a lot of things we've been trying to get resolved
4 here at the Board. Trying to get those resolved before it
5 ever comes to the Board. So that when the Board meets, the
6 Board has it before it all the information necessary to make
7 a decision.

8 MASON BRENT: Okay.

9 BENNY WAMPLER: Any further discussion?

10 (No audible response.)

11 BENNY WAMPLER: All in favor signify by saying yes.

12 (All members signify yes.)

13 BENNY WAMPLER: Oppose say no.

14 (No audible response.)

15 BENNY WAMPLER: You have unanimous approval. Thank
16 you.

17 TOM FULMER: Thank you, Mr. Chairman.

18 BENNY WAMPLER: Thank you. The next item on today's
19 agenda the Gas and Oil Board will consider an amended
20 supplemental order filed by Equitable Production concerning a
21 conventional gas drilling unit identified V-2364. The
22 original order and subsequent supplemental order identified
23 Mr. Jimmy Sexton as an unlocatable party; and Mr. Sexton has
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1 now been located and the amended order is being considered by
2 the Board in order to disburse to him those funds on deposit.
3 This is docket number VGOB-94-06/21-0456-01. We'd ask the
4 parties that wish to address the Board in this matter to come
5 forward at this time.

6 MR. KISER: Mr. Chairman and members of the Board,
7 Jim Kiser on behalf of Equitable Production Company.

8 BENNY WAMPLER: The record will show there are no
9 others. You may proceed.

10 JIM KISER: Ms. Riggs' office and I have worked
11 together on drafting this amended supplemental order to
12 provide the disbursement of Mr. Sexton's funds. This is a
13 well that we forced pooled in 1994 and the well was drilled
14 in '94. He was unlocateable at that time and actually found
15 equitable. His interest within Tract 8 is .163333. That's
16 his percentage of interest within the unit and we...the
17 operator has sent a list of the deposits made for that
18 interest to both the...Ms. Riggs' office and to the escrow
19 agent and I believe the amount that has been reconciled is
20 somewhere in the are of \$98.00 and we'd ask the order...the
21 amended supplemental order be approved and that you allow the
22 disbursement of that money to Mr. Sexton.

23 BENNY WAMPLER: The information we have is \$98.34.

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1 Any questions from members of the Board?

2 (No audible response.)

3 BENNY WAMPLER: Is there a motion to disburse?

4 MAX LEWIS: I make a motion that we disburse.

5 MASON BRENT: Second.

6 BENNY WAMPLER: Motion is seconded. Any further

7 discussions?

8 (No audible response.)

9 BENNY WAMPLER: All in favor signify by saying yes.

10 (All members signify yes.)

11 BENNY WAMPLER: Oppose say no.

12 (No audible response.)

13 BENNY WAMPLER: You have approval. Thank you.

14 The next item on the agenda, the Board will

15 consider an application filed by Torch Energy Advisors,

16 Incorporated, Gayle Henderson, Ralph Addison, Helen McGrady,

17 Joe Addison, Evelyn Massey and Coal Mountain Mining Company

18 Limited Partnerships, LLP, (herein after claimants) to amend

19 the previous order issued for Unit SLW5, docket number VGOB-

20 92/18-0183-01 for the calculation and thereafter disbursement

21 of funds of...to claimants of funds on deposit in the

22 drilling unit escrow accounts based upon claimants'

23 stipulated settlement of their conflicting claims. This is

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1 docket number VGOB-92-02/18-0183-02. We'd ask the parties
2 that wish to address the Board in this matter to come forward
3 at this time, please.

4 SANDY FRALEY: Actually, Mr. Chairman, I believe
5 that one of our witnesses in this matter has not yet arrived,
6 Ms. Gail Henderson. I know she was traveling from a
7 distance out of the town this morning and did plan to be here
8 and hopefully she will be here soon. So, if nobody has an
9 object...an objection could we defer these and move forward
10 with items...other items that are on the agenda?

11 BENNY WAMPLER: Okay. That would move then to
12 number five on the agenda?

13 SANDY FRALEY: Yes.

14 BENNY WAMPLER: All right. With no objection, we'll
15 do that. The Gas and Oil Board will now consider an
16 application filed by Garden Realty Corporation, Coal
17 Mining...Coal Mountain Mining Company Limited Partnership,
18 LLP and Torch Energy Advisors, Incorporated to amend the
19 previous order issued for Unit SLW7, docket number VGOB-92-
20 01/21-0185-01 for the calculation and thereafter disbursement
21 to claimants of funds on deposit in the drilling unit escrow
22 accounts based upon claimants' stipulated settlement of their
23 conflicting claims to the ownership of the coalbed methane

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1 gas produced from the well(s) located on said drilling
2 unit(s) and allocable to certain tracts owned by claimants.
3 This is today's docket number VGOB-92-02/18-0185-02. We'd
4 ask the parties that wish to address the Board in this matter
5 to come forward at this time and introduce yourselves,
6 please.

7 SANDY FRALEY: I'm Sandy Fraley. I'm here on behalf
8 of Jill Harrison who is in this matter is representing Garden
9 Realty, Coal Mountain Mining, Torch Energy and Pocahontas Gas
10 Partnership. If we could go ahead, I think...and jump ahead
11 a little bit here and amend two of our applications, I think
12 we can actually consolidate what I believe are agenda item
13 number five through eleven in this matter. We will be
14 amending two of those applications to withdraw the request on
15 two PGP tracts. So, with that amendment, it will leave only
16 Garden Realty, Coal Mining and Torch Energy as the applicant
17 and Ms. King and Mr. Williams will be our only witnesses for
18 those matters. I think it will make things go a lot quicker
19 if we can just consolidate those for purposes of testimony if
20 there are no objections.

21 BENNY WAMPLER: Okay. I'll go ahead and call those
22 and we'll see. In addition to the agenda item I just called,
23 I'm calling docket VGOB-92-004/21-0216-02 and docket number
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1 VGOB-92-04/21-0217-02, docket number VGOB-96-01/16-0530-01,
2 docket number VGOB-96-01/16-0531-01, docket number VGOB-95-
3 04/18-0499-03, and docket number VGOB-95-04/18-0502-02. We'd
4 ask the parties that wish to address the Board in these
5 matters to come forward at this time.

6 BENNY WAMPLER: There are no additional parties.
7 We'd ask, is there any objection to consolidation of these
8 agenda items?

9 (No audible response.)

10 BENNY WAMPLER: Hearing none, you may proceed.

11 SANDY FRALEY: Okay. I would start then by our
12 amendments. In our application for South Longwall Number 8,
13 which is agenda item number six, we will be amending that
14 application to withdraw our request for disbursement on Tract
15 number 56A which is showing Torch Energy and PGP as
16 conflicting claimants. In our application on South Longwall
17 Number 9, which is your agenda item number seven, we will be
18 withdrawing our application for disbursement on Tract number
19 75 in that application, which is also Torch and PGP as
20 conflicting claimants.

21 BENNY WAMPLER: Okay.

22 SANDY FRALEY: Okay. With those amendments then, I
23 think we can proceed. Our first witness is Mr. George

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1 Williams, who is with Coal Mountain Mining.

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5 GEORGE WILLIAMS

6 DIRECT EXAMINATION

7 QUESTIONS BY MS. FRALEY:

8 Q. For the record, Mr. Williams, could you
9 please state your full name?

10 A. Yes. My name is George Williams.

11 Q. And you are the managing partner of Coal
12 Mountain Mining Limited Liability Partnership?

13 A. That's correct.

14 Q. And in previous orders of the Board and
15 certain exhibits, Coal Mountain has been listed as Coal
16 Mountain Mining Company, Coal Mountain Trust. Are these
17 entities and predecessors to Coal Mountain Mining Limited
18 Liability Partnership and basically all one in the same
19 entity, sir?

20 A. That's correct.

21 Q. With the current name of that entity again
22 being Coal Mountain Mining Company Limited Liability
23 Partnership?

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1 A. LLP, that's correct.

2 Q. LLP. To your knowledge, has Coal Mountain,
3 Garden Realty and Hugh McRae and are Torch Energy claim
4 conflicting interest to the coalbed methane in certain
5 tracts, which we'll get into a little specifically a little
6 later?

7 A. Yes.

8 Q. To your knowledge, have Coal Mountain,
9 Garden Realty and Hugh McRae and Torch Energy entered into
10 certain agreements to resolve these conflicting claims to the
11 coalbed methane and to provide how royalties attributable to
12 these interest will be paid?

13 A. Yes.

14 Q. Okay. Let's start with Hugh McRae and Torch
15 Energy. Is it your understanding that Hugh McRae claimed an
16 interest in certain tracts of land in this unit?

17 A. Yes.

18 Q. Is it also your understanding that Hugh
19 McRae conveyed its interest in the royalty related to the
20 production of coalbed methane to Torch Energy?

21 A. That's correct.

22 Q. Okay. If you'll look at the exhibits for
23 South Longwall Number 7 and look at item number three. Is it

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1 your understanding that this is the agreement by which Hugh
2 McRae conveyed its interest in the coalbed methane royalties
3 to Torch?

4 A. Yes, it is.

5 Q. Okay. Have Hugh McRae, Torch Energy and
6 Coal Mountain entered into an agreement resolving their
7 conflicting claims to the coalbed methane underlying these
8 tracts and setting forth how royalties in this in...how the
9 royalties attributable to this interest will be paid?

10 A. Yes, they have.

11 Q. Okay. If you'll look at Exhibit Two to
12 South...again, to South Longwall 7. Is this the agreement
13 that Hugh McRae, Torch Energy and Coal Mountain have entered
14 to resolve their conflicting claims and to provide for the
15 payment of coalbed methane royalties?

16 A. Yes.

17 Q. Have Coal Mountain and Garden Realty entered
18 into an agreement resolving their conflicting claims to the
19 coalbed methane underlying certain tracts and setting forth
20 how their royalties are to be paid?

21 A. Yes, they have.

22 Q. Okay. If you'll look at Exhibit One in this
23 same package. Is this the agreement that Coal Mountain and

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1 Garden Realty have entered?

2 A. Yes, it is.

3 Q. Okay. Now, let's get into the specific
4 units and tracts in which a conflict exists between Coal
5 Mountain and Torch Energy, if we could. Looking at the
6 application for South Longwall Unit Number 7, Tract number
7 30. To your knowledge, does Coal Mountain claim the oil and
8 gas underlying this tract and Torch Energy claim the coalbed
9 methane as a result of the ownership of the coal ownership of
10 this tract?

11 A. That's correct.

12 Q. Okay. And South Longwall Unit Number 8.
13 Again Tract number 45. To your knowledge, does Coal Mountain
14 claim the oil and gas interest in this tract and Torch claim
15 the right to the coalbed methane royalties based on the coal
16 ownership?

17 A. Yes, they do.

18 Q. Okay. Based on the agreements that you've
19 previously testified about, are Coal Mountain and Torch
20 Energy asking the Board to amend its orders to reflect that
21 Coal Mountain, Hugh McRae and Torch are no longer conflicting
22 claimants to these units?

23 A. That's correct.

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1 Q. And are Coal Mountain and Torch Energy also
2 asking the Board to enter an order directing that the escrow
3 agent and the operator account for the funds deposited on
4 behalf of these units and to pay Coal Mountain and Torch the
5 funds on deposit and all future royalties for their interest
6 in their units?

7 A. Yes.

8 SANDRA FRALEY: Okay. Those are all the questions
9 that I have for Mr. Williams.

10 BENNY WAMPLER: Questions from members of the Board?

11 SANDRA RIGGS: Coal Mountain Mining LLP, is that the
12 way...Coal Mountain Mining Com..Company---?

13 GEORGE WILLIAMS: Coal Mountain Mining Company
14 Limited Partnership, LLP.

15 SANDY FRALEY: Co. is abbreviated...the Company is
16 abbreviated Co., is that correct?

17 (No audible response.)

18 BENNY WAMPLER: Let me just clean up one...one thing
19 that's still on that name. If you recall early, I think you
20 said Coal Mountain Mining Company Limited Liability
21 Partnership, LLP. Is it Limited Partnership or Limited
22 Liability Partnership just in the name itself?

23 GEORGE WILLIAMS: Limited Liability Partnership.

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1 BENNY WAMPLER: Okay.

2 SANDY FRALEY: I believe it is and we omitted that
3 from our application. So...

4 BENNY WAMPLER: I just wanted to get that straight.

5 SANDY FRALEY: Thank you.

6 BENNY WAMPLER: Other questions of this witness?
7 (No audible response.)

8 BENNY WAMPLER: Do you have another witness?

9 SANDY FRALEY: Yes. Our next witness in this case
10 will be Ms. Betty (Boyd) King.

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12 BETTY (BOYD) KING

13 DIRECT EXAMINATION

14 QUESTIONS BY MS. FRALEY:

15 Q. Please state your name for the record.

16 A. Betty (Boyd) King.

17 Q. And are you the President of Garden Realty
18 Corporation?

19 A. Yes.

20 Q. Is it your understanding that Coal Mountain,
21 Garden Realty, Hugh McRae and Torch Energy claim conflicting
22 interest to the coalbed methane in certain tracts and certain
23 units?

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1 A. Yes.

2 Q. To your knowledge, have coalbed methane....,
3 Garden Realty and Hugh McRae and Torch entered into an
4 agreements to resolve these conflicting claims to the coalbed
5 methane and to provide how royalties will be paid?

6 A. Yes.

7 Q. Have Coal Mountain and Garden Realty entered
8 into an agreement resolving their conflicting claims to the
9 coalbed methane and setting forth how the royalties are to be
10 paid?

11 A. Yes.

12 Q. Could you also please look at Exhibit One
13 for Unit 7 and confirm for us that this is the agreement that
14 Coal Mountain and Garden Realty have entered to resolve their
15 conflicting claims and to provide for the payment of
16 royalties?

17 A. Yes.

18 Q. Okay. Now, let's go through the specific
19 tracts in which a conflict exists between Garden Realty and
20 Coal Mountain in all of these units. Now, first, is it your
21 understanding that Coal Mountain claims the ownership of the
22 coal and that Garden Realty claims the ownership of the oil
23 and gas underlying these tracts?

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1 A. Yes.

2 Q. Okay. Looking at our application in South
3 Longwall Number 7, Tract number 41B and Tract number 41C. Is
4 it your understanding that that's the correct interest in
5 conflicts set forth here? Coal Mountain, the coal and Garden
6 Realty the oil and gas?

7 A. Yes. Yes. Yes.

8 Q. Okay. And South Longwall Unit Number 8,
9 which I have the application for you here. We're showing
10 Tract 58 and Tract 58A, Coal Mountain claiming the coal and
11 Garden claiming the oil and gas---?

12 A. Yes.

13 Q. ---both of those? South Longwall Unit
14 Number 9. Showing Tract Number 79 and 79E. Again, Coal
15 Mountain with the coal and Garden with the oil and gas rights
16 of these tracts?

17 A. Right.

18 Q. Okay. We're in Unit B28. This one we are
19 showing Tract number 9 and Tract numbers 11-13?

20 A. Yes.

21 Q. Unit B29. Tract numbers 5-11. Coal
22 Mountain coal and Garden oil and gas?

23 A. Yes.

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1 BENNY WAMPLER: Slow down just one second.
2 SANDY FRALEY: Okay.
3 BENNY WAMPLER: I'm with you, but we're turning more
4 pages.
5 SANDY FRALEY: Okay. That's true.
6 A. Where are we now.
7 Q. Now, we're on W-29---?
8 A. 29?
9 Q. Yes. Okay, on W-29 just looking right now
10 at Tracts 1 and 2, we're showing Coal Mountain with the coal
11 and Garden with the oil and gas?
12 A. Yes.
13 Q. Okay, also on this application, Garden has a
14 conflict with Torch on Tract 17 and we'll come back to that
15 one in just a second. Okay, on our last unit which is W-30,
16 on Tract number 2, Coal Mountain coal and Garden Realty the
17 oil and gas?
18 A. Yes.
19 Q. Okay. Based on the agreement that you
20 testified about between Garden Realty and Coal Mountain, are
21 you asking that the Board amend its orders to reflect that
22 Garden Realty and Coal Mountain are no longer conflicting
23 claimants to those tracts?

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1 A. Yes.

2 Q. And are you also asking that the Board enter
3 an order directing the escrow agent and the operator to
4 account for the funds deposited and to pay Garden Realty and
5 Coal Mountain the funds on deposit---?

6 A. Yes.

7 Q. ---and all future royalties?

8 A. Yes.

9 Q. Okay. Let's go back to W-29, Tract 17. Do
10 I not have that application here for you?

11 (No audible response.)

12 Q. That unit also includes a tract in which a
13 conflict exists between Torch and Garden Realty. In this
14 instance, does Garden Realty claim the ownership of the oil
15 and gas underlying this tract?

16 A. Yes.

17 Q. Okay. And does...to your knowledge does
18 Hugh McRae claim to own the interest in the coal underlying
19 this tract?

20 A. To my knowledge.

21 Q. Okay. And the application correctly sets
22 forth this interest to your knowledge?

23 A. (No audible response.)

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1 Q. Have Hugh McRae Land Trust and Garden Realty
2 entered into an agreement that resolves their conflicting
3 claims to the coalbed methane underlying this tract and
4 setting forth how royalties---?

5 A. Yes.

6 Q. ---are to be paid?

7 A. Yes.

8 Q. Okay. If you could look at Exhibit Two in
9 our booklet for W-29. Okay. Is this the agreement that Hugh
10 McRae and Garden Realty have entered to resolve those
11 conflicting claims and to provide for the payment of the
12 royalties?

13 A. Yes. Yes.

14 Q. Okay. Is it your understanding that Hugh
15 McRae has conveyed its interest in the royalty related to the
16 production of coalbed methane to Torch Energy?

17 A. Yes.

18 Q. Okay. If you could also look at Exhibit
19 Three in this same booklet for W-29. Is it your
20 understanding that this is the instrument by which Hugh McRae
21 conveyed this interest to Torch?

22 A. Yes.

23 Q. Okay. Based on these agreements, are Garden
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1 Realty and Torch asking the Board to amend its order to
2 reflect that there's no longer conflicting claims to this
3 tract?

4 A. Yes.

5 Q. Are you also asking the Board to enter an
6 order directing the escrow agent and the operator to account
7 for the funds deposited and to pay Garden Realty and Torch
8 the funds on deposit and all future royalties?

9 A. Yes.

10 SANDY FRALEY: Those are all the questions that I
11 have for Ms. King.

12 BENNY WAMPLER: Questions from member of the Board?

13 (No audible response.)

14 BENNY WAMPLER: Okay. Do you have any---?

15 SANDY FRALEY: If there are no further questions,
16 then I would request that the Board grant our applications as
17 amended with the withdrawal of the Tract 56A on Southwest
18 Unit 8 and Tract 75 on South Longwall...South Longwall Unit
19 Number 9, subject to our review of an accounting which I hope
20 and assume is going to be provided to us today. Is that
21 correct?

22 LES ARRINGTON: Yes. I hope it is.

23 SANDY FRALEY: Okay.

24

--

1 SANDRA RIGGS: I just had one question on Tract 75.
2 That has already been disbursed in the last round of
3 disbursements. So, since you're withdrawing now with respect
4 to that and the money has already been disbursed, how will
5 that be handled?
6 SANDY FRALEY: I am sure that we will be more than
7 willing to pay that back into the escrow. That was paid to
8 PGP, I think. That was a PGP/Torch tract, is that correct?
9 SANDRA RIGGS: Torch and PGP. Right.
10 SANDY FRALEY: Yeah. Yeah, I think that was just
11 inadvertently disbursed and we did not mean for it to be
12 disbursed and somewhere in the amount of about \$1,600, if I'm
13 thinking, that's right. Is that right, Mr. Looney? Do you
14 know what the amount of that disburse---?
15 BOB LOONEY: I think that's correct. We're going to
16 have to do an amended supplemental order, I guess, to put
17 that money back.
18 SANDRA RIGGS: Well, the supplemental order is
19 currently showing Torch/PGP.
20 BOB LOONEY: Right.
21 SANDRA RIGGS: And that's incorrect?
22 BOB LOONEY: That's incorrect.
23 SANDRA RIGGS: Okay.

24

--

1 (Tom Fulmer and Sandra Riggs confer among
2 themselves.)

3 BENNY WAMPLER: Any...any further questions from
4 members of the Board and what you've been asked to do here?

5 (No audible response.)

6 BENNY WAMPLER: Do you have a motion?

7 MAX LEWIS: I make a motion.

8 BENNY WAMPLER: Motion to approve as amended.

9 MASON BRENT: Second.

10 BENNY WAMPLER: We have a motion and second. Any
11 further discussions?

12 SANDRA RIGGS: Subject to an order for the PGP and
13 Torch to redeposit the funds attributable to Tract 75 into
14 the South Longwall 9 escrow account.

15 BENNY WAMPLER: With a supplemental order.

16 SANDRA RIGGS: And an amended supplemental order.

17 BENNY WAMPLER: Amended supplemental order. We have
18 a motion and a second. All in favor, signify by saying yes.

19 (All members signify yes.)

20 BENNY WAMPLER: Oppose say no.

21 (No audible response.)

22 BENNY WAMPLER: You have approval.

23 SANDY FRALEY: Okay. You are excused. Thank you
24

1 very much. We'll be finished in just a second.

2 BETTY (BOYD) KING: I'll wait.

3 LES ARRINGTON: Do you want me to pass them all out

4 at once or do you want to go through one at a time?

5 BENNY WAMPLER: I'd say pass them all out.

6 LES ARRINGTON: Okay.

7 BENNY WAMPLER: You've got them labeled which ones

8 we're doing in the top right...top left hand corner. Are

9 they all that way?

10 LES ARRINGTON: Yes, they are.

11 BENNY WAMPLER: Get them before us and we'll go

12 through them.

13 (Les Arrington hands out the spreadsheets.)

14 (Sandy Fraley confers with Betty (Boyd) King while

15 the spreadsheets are being handed out.)

16 (The Board members confer among themselves while

17 spreadsheets are being handed out.)

18 LES ARRINGTON: We're holding South Longwall 5,

19 right?

20 SANDY FRALEY: Yes. For the moment.

21 LES ARRINGTON: Okay.

22 (Les Arrington continues to hand out spreadsheets.)

23 SANDY FRALEY: 6. We're...yeah, we're holding on 6

24

1 also.

2 LES ARRINGTON: 6, also?

3 SANDRA FRALEY: Yeah, so we'll just kind of set that
4 one over to the side for the moment. Ms. King, you're not
5 involved in this one.

6 LES ARRINGTON: Okay. So, we're going to hold South
7 Longwall 6 and 7?

8 SANDY FRALEY: 5 and 6.

9 LES ARRINGTON: 5 and 6, okay.

10 SANDY FRALEY: Uh-huh.

11 LES ARRINGTON: Okay, I'm...all of the spreadsheets
12 are basically laid out the same. So hopefully, they're
13 pretty much self explanatory. Now, for South Longwall 7, 8
14 and 9, I believe that's...will be the ones. Those
15 will...will reflect the past with disbursements. You'll
16 notice that there is a problem on there for disbursements.
17 The only problems that we've seen on those, they're balanced
18 through May 31st and it also shows our Conoco checks going in
19 on June 30th, but no bank statement for June 30th. You'll
20 notice that there is still some...for the disbursements,
21 there's still some money in there for the past disbursements
22 for interest and other than that, I don't think there's any
23 real problems on them. Our Conoco totals seem to...they
24

1 balance with the escrow bank.

2 SANDRA RIGGS: Tract 17 on W-29.

3 LES ARRINGTON: Okay. That's the reason. We had

4 that one mis...that tract mislabeled. It should be Tract 5

5 on our escrow sheets here.

6 BENNY WAMPLER: On these spreadsheets?

7 LES ARRINGTON: Yes, on the spreadsheets it should

8 be Tract 5.

9 BOB LOONEY: Tract 5.

10 SANDRA RIGGS: \$630.67?

11 LES ARRINGTON: Yes, ma'am.

12 TOM FULMER: It's not in Tract 17, is it?

13 BOB LOONEY: No, that was the Hugh McRae Tract

14 numbers somebody picked up on there. Right?

15 LES ARRINGTON: The coal...the Hugh McRae coal Tract

16 17, is what that---.

17 BOB LOONEY: Coal Tract 17, is what that represents

18 that 17.

19 TOM FULMER: But it's your Tract 5?

20 LES ARRINGTON: Yes, it is.

21 BOB LOONEY: 5.

22 TOM FULMER: So, the petition will now reflect Tract

23 5 instead 17?

24

1 BOB LOONEY: Tract 5. Right.

2 SANDRA RIGGS: So, go back the other way. The

3 accounting is right?

4 LES ARRINGTON: Yes.

5 BOB LOONEY: Yes.

6 SANDRA RIGGS: Okay.

7 BENNY WAMPLER: Would you clarify then, just for the

8 record, what we're...what we're...the change that you're

9 reflecting?

10 LES ARRINGTON: Yes. For Unit number W-29, the

11 original petition that has been filed was for Torch and

12 Garden, Tract 17. On our spreadsheet, that tract is

13 represented by Tract number 5.

14 SANDRA RIGGS: Exhibit E shows it as 5 as well.

15 Okay.

16 (Sandy Fraley and Betty (Boyd) King continue to

17 review the spreadsheets and confer among themselves.)

18 SANDY FRALEY: Just to make sure I understand how

19 these spreadsheets are set up and again, I'm sort of coming

20 into this new. On the left hand side, we have all of the

21 money that was placed into escrow and then here we have the

22 changes based on addition of interest.

23 LES ARRINGTON: That's correct.

24

--

1 SANDY FRALEY: Throughout the time period. So, the
2 total dollars that we would be looking at, for example, on
3 South Longwall 7 for Ms. King and Garden Realty's interest in
4 Tract 41B and 41C, is actually going to be the last column,
5 which is the \$1,100?

6 LES ARRINGTON: It will be. Yes, it is. That
7 should be a running total.

8 SANDY FRALEY: And that includes all the monies that
9 were placed into escrow plus all the interest changes?

10 LES ARRINGTON: Yes, it does.

11 SANDY FRALEY: And these have all been reconciled
12 with the bank records, with the---?

13 LES ARRINGTON: They have. We---.

14 SANDY FRALEY: ---exception of the June 30th
15 deposit?

16 LES ARRINGTON: Right.

17 SANDY FRALEY: Okay.

18 BENNY WAMPLER: All the escrow charges have been
19 included in there, is that correct, Mr. Ditz, with the
20 exception of that June 30th deposit?

21 (Mr. Dale Ditz indicates from the audience, yes.)

22 BENNY WAMPLER: The record will show that we're
23 getting that acknowledgment.

24

--

1 SANDY FRALEY: Okay.

2 BENNY WAMPLER: What we're going to do is to take
3 these, and Ms. Riggs had sent out draft orders, take the
4 orders one at a time and go through that and see if we can
5 arrive at a consensus on what that number should be that
6 would go in the order. I think that will keep...keep the
7 record clear for us and if, you know...if you have trouble
8 following that at the time...reconcile it one at a time, I
9 think.

10 SANDY FRALEY: Okay. That's good. I mean, I...and
11 I agree with that. My only request would be that if we can
12 go through and get our numbers today, that I be allowed to
13 take these back and confirm with Jill on them to make sure
14 that she has no objection and then follow up with a letter to
15 you in the next day or so stating that we have no objections.

16 BENNY WAMPLER: That's fine.

17 SANDRA RIGGS: If there's an objection it would have
18 to come back to the Board. If there's not an objection, then
19 the orders can be entered as we're going to discuss right
20 now.

21 SANDY FRALEY: Right.

22 SANDRA RIGGS: Okay.

23 BENNY WAMPLER: That works.

24

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1 SANDRA RIGGS: The two that you skipped were the two
2 with Addison heirs?

3 SANDY FRALEY: Right.

4 SANDRA RIGGS: Okay.

5 BENNY WAMPLER: 5 and 6, right?

6 SANDY FRALEY: Correct.

7 SANDRA RIGGS: Starting with South Longwall 7, the
8 first change to the draft order would be that Coal Mountain
9 Mining will now be Coal Mountain Mining Company Limited
10 Liability Partnership, LLP, formerly known as Coal Mountain
11 Mining Company. The next change is in relief sought
12 paragraph three where it says, "Disbursement to Torch and
13 Coal Mountain."

14 BENNY WAMPLER: Wait just one second. As they're
15 getting orders, do you have any questions?

16 (No audible response.)

17 SANDRA RIGGS: I'm sorry, in four where it says,
18 "Disbursement to Torch and Garden" it should be Coal Mountain
19 and Garden. Is that correct?

20 SANDY FRALEY: I think so, yeah.

21 SANDRA RIGGS: Let me---.

22 BOB LOONEY: Which one, now?

23 SANDRA RIGGS: That was an error in the draft order

24

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1 for Tract 41B and 41C. The draft order had shown Torch and
2 Garden when it should have been Coal Mountain and Garden.

3 SANDY FRALEY: Correct.

4 SANDRA RIGGS: On...in paragraph four, the date of
5 three part letters that went out in both 4.1 and 4.2, the
6 blanks are June 25th of '99. On page three in paragraph 4.3
7 Sub 4, in the chart Tract 30 is 36.788 acres representing
8 19.84411 percent and the funds on deposit in escrow are
9 \$46,332.53. In the next sub paragraph five on the
10 accounting, Tracts 41B and 41C have been combined in to one
11 column, but 41B is 0.76 acre tract representing 0.40996
12 percent and Tract 41C is a 0.16 acre tract representing
13 0.08631 percent and the combined amount on deposit for 41B
14 and 41C is \$1,157.59. In paragraph 5.4, the accounting
15 through June 30th, 1999...as of June 30th, 1999?

16 LES ARRINGTON: That's the Conoco accounting. It
17 does not include for...does not include the banks accounting
18 for June.

19 SANDRA RIGGS: Exclusive interest accrued and fees?

20 LES ARRINGTON: That's correct. Our balance is good
21 through May 31st.

22 SANDRA RIGGS: And that's exclusive of interest and
23 fees for the month of June?

24

--

1 LES ARRINGTON: Yes.

2 SANDRA RIGGS: And the others are just mathematical
3 calculations on the 50...50/50 split which I'll work those
4 numbers out.

5 SANDY FRALEY: How will we handle the interest and
6 fees for that last month?

7 SANDRA RIGGS: When will those get posted, Dale?

8 DALE DITZ: Being posted all month. We should have
9 the report momentarily.

10 SANDRA RIGGS: So, probably about the time this
11 order gets cut I can word it in such a way that those will
12 get included and a number. The next one is South Longwall 8,
13 docket 0216. Again, Coal Mountain Mining Company Limited
14 Liability Partnership, LLP formerly known as Coal Mountain
15 Mining Company.

16 SANDY FRALEY: You know, what we should probably in
17 those....also put formerly known as Coal Mountain Mining
18 Trust, because I know in some of the prior orders and
19 exhibits, it was shown as Coal Mountain Trust. Isn't that
20 right, Mr. Williams?

21 SANDRA RIGGS: It will...it will get picked up that
22 way because---.

23 SANDY FRALEY: Okay.

24

1 SANDRA RIGGS: ---it's shown as applicants as it's
2 shown on the Exhibit E. So, if it---.

3 SANDY FRALEY: Okay.

4 SANDRA RIGGS: In the relief sought, delete Sub 4,
5 which is the disbursement for Tract 56A. Paragraph 4.1, the
6 three part letter dated 6/25/95. In charts in paragraph 4.3,
7 the first one is Tract 45, which is 4.324 acre tract
8 representing 2.37807 percent of the unit. Funds on deposit
9 \$896.15. So, paragraph five will be deleted because it
10 refers to Tract 56A. So, paragraph six, Tracts 58 and 58A.
11 Tract 58 is an 8.23 acre tract representing 4.52626 percent
12 of the unit. Funds on deposit \$1,702.95 cents. Tract 50A is
13 a 7.14 acre tract representing 3.92679 percent of the unit.
14 Funds on deposit \$1,506.90.

15 BENNY WAMPLER: You said Tract 58A for that?

16 SANDRA RIGGS: Uh-huh.

17 BENNY WAMPLER: Yeah. I think you said 50A.

18 BOB LOONEY: 50A.

19 SANDRA RIGGS: 58A.

20 BENNY WAMPLER: Yeah. You said 50.

21 SANDRA RIGGS: Sorry. The accounting was as of
22 5/31/99. Does this carry the same stipulation on posting of
23 interest?

24

1 LES ARRINGTON: Now, it...it does. There was
2 nothing...we had no checks going into this unit. So, this
3 balance is...our balance and their balance as of May 31st.
4 So, the---.

5 SANDRA RIGGS: Are the same?

6 LES ARRINGTON: Are the same.

7 SANDRA RIGGS: Okay.

8 BENNY WAMPLER: So, does that mean that June 30th
9 that---.

10 LES ARRINGTON: Well, it will still need the bank's
11 interest added to it, or whatever fees.....

12 SANDRA RIGGS: Well, I think the way the order
13 normally reads is the date of the accounting and it's 5/31
14 and they're to disburse this amount together with any
15 interest accruing after that date through date of
16 disbursement.

17 BENNY WAMPLER: Right.

18 SANDRA RIGGS: The next one is South Longwall 9,
19 docket 0217. The name of the applicant again changes Coal
20 Mountain Mining Company Limited Liability Partnership, LLP
21 formerly known as Coal Mountain Mining Company and the relief
22 sought reference to Tract 75 will be deleted. The three part
23 letter dates that go in the blanks in 4.1 and 4.2 is June
24
--

1 25th of '99. On page three in the chart contained in Sub
2 paragraph 6, Tract 79 is a 9.19 acre tract representing
3 5.03484 percent of the unit. Funds on deposit \$1,778.39.
4 Tract 79E is a 4.28 acre tract representing 2.34485 percent
5 of the unit. Funds on deposit \$828.28.

6 LES ARRINGTON: Go back.

7 SANDY FRALEY: Go all the way to the end for that
8 one. 79C.

9 SANDRA RIGGS: Back the other way.

10 BENNY WAMPLER: Other way. It should be right there
11 on your right.

12 SANDY FRALEY: Yeah, here it is.

13 SANDRA RIGGS: 828.28.

14 SANDY FRALEY: Yeah.

15 SANDRA RIGGS: And the accounting is as of 5/31/99.

16 The next one is the V-28 drilling unit, docket 0530. Coal
17 Mountain Mining changes to Coal Mountain Mining Company
18 Limited Liability Partnership, LLP formerly known as Coal
19 Mountain Mining and Coal Mountain Trust. The date of the
20 three part letters in 4.1 and 4.2 is June 25th of '99. In
21 paragraph 4.3 Sub 3 in the chart, Tract number 9 is 0.13 acre
22 tract representing 0.1643 percent of the unit. Funds on
23 deposit \$127.00. Tract 11-13 is a 1.03 acre tract

24

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1 representing 1.2890 percent of the unit. Funds on deposit
2 \$1,006.24. Date of the accounting 5/25/99.

3 BENNY WAMPLER: There again your Consol funds
4 there's still...there are funds on deposit as of 6/30 though,
5 right?

6 LES ARRINGTON: Yeah. On this one is....stops at
7 5/25 and that's where we were updated to.

8 BENNY WAMPLER: Okay. All right.

9 SANDRA RIGGS: The next is on is the V-29 drilling
10 unit, docket 0531. Coal Mountain Mining changes to Coal
11 Mountain Mining Company Limited Liability Partnership, LLP
12 formerly known as Coal Mount...Coal Mining...Mountain Mining
13 and Coal Mountain Trust. The three part letter dates in 4.1
14 and 4.2 are 6/25/99. In the chart on paragraph 4.3 Sub 3,
15 Tracts 5-11 17.29 acre tract representing 21.6125 percent of
16 the unit. Funds on deposit \$18,080.41. The date of the
17 accounting is April 24th, 1999. The next one is Unit W-29,
18 docket 0499. Coal Mountain Mining changed to Coal Mountain
19 Mining Limited Liability Partnership LLP formerly known as
20 Coal Mountain Mining and Coal Mountain Trust. References to
21 Tract 17 throughout changed to Tract 5. Footnote number two
22 will now come out because the tract numbers changed to be
23 consistent with the Exhibit E. The three part letter dates

24

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1 in 4.1 and 4.2 will be 6/25/99. The chart on page three in
2 paragraph 4.3 Sub 3, Tracts 1 and 2 represent 37.58 acres or
3 46.97500 percent of the drilling unit. Funds on deposit
4 \$20,787.49. In Sub paragraph 4 for Tract 5 which was
5 formerly designated 17, it's a 1.2 acre tract representing
6 1.57500 percent of the drilling unit. Funds on deposit
7 \$630.67. The date of the accounting is June 25th, '99. The
8 last one is the W-30 drilling unit, docket 0502. The name of
9 the applicant Coal Mount...Coal Mountain Mining and Coal
10 Mountain Trust is changed to Coal Mountain Mining Company
11 Limited Liability Partnership, LLP, formerly known as Coal
12 Mountain Mining and Coal Mountain Trust. The three part
13 letter dates in 4.1 and 4.2 are June 25th, '99. The chart in
14 paragraph 4.3, Sub 3, Tract 2 is a 0.15 acre tract
15 representing 0.18750 percent of the drilling unit. Funds on
16 deposit \$102.80. The accounting is as of June 25th, '99.
17 The order of docket 0217 which was the South Longwall 9
18 drilling unit were contained in an order that the applicants
19 that previously received the moneys on Tract 75 redeposited
20 from into the escrow account and that an amended supplemental
21 order be filed to correct that?

22 LES ARRINGTON AND BOB LOONEY: (Indicates in the
23 affirmative.)

24

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1 BENNY WAMPLER: These exhibits that you handed
2 out...the exhibit...the other exhibits that really haven't
3 been moved into the record. Do you want to do those right
4 before B-29 and W-30, XLW9 and V-28?

5 SANDY FRALEY: Yeah, at this time, you know, I would
6 just like to move to introduce them as evidence in the
7 appropriate docket number. They all contain the same
8 exhibits that we have gone through already.

9 BENNY WAMPLER: Right.

10 SANDY FRALEY: They're just additional copies of the
11 agreements for the record for each individual application.

12 BENNY WAMPLER: I understand. I just want to get
13 them into the record.

14 SANDY FRALEY: Thank you very much.

15 BENNY WAMPLER: Any questions from members of the
16 Board?

17 (No audible response.)

18 BENNY WAMPLER: Do you have anything further?

19 SANDY FRALEY: No, I do not.

20 BENNY WAMPLER: Mr. Arrington, do you have anything
21 further?

22 LES ARRINGTON: No.

23 SANDRA RIGGS: This is an amended supplemental
24

1 order.

2 BENNY WAMPLER: Do I have a motion?

3 MASON BRENT: Mr. Chairman, I'd move that we grant

4 the disbursements.

5 MAX LEWIS: And I second it.

6 BENNY WAMPLER: Motion is seconded. Any further

7 discussions?

8 (No audible response.)

9 BENNY WAMPLER: All in favor signify by saying yes.

10 (All members signify yes.)

11 BENNY WAMPLER: Opposed say no.

12 (No audible response.)

13 BENNY WAMPLER: You have approval. Thank you. Did

14 this process work okay for everyone involved where we're

15 shifting to the new process?

16 SANDRA RIGGS: The time is tight.

17 LES ARRINGTON: I'd just like it, you know...there

18 was nine of them. It takes a little while.

19 CLAUDE MORGAN: Just don't give us any more than

20 this past one.

21 BENNY WAMPLER: We could say the same thing.

22 SANDY FRALEY: And I can't tell you for what Jill

23 has planned. So...

24

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1 MASON BRENT: Mr. Chairman, is it possible for...for
2 this party here to see these balances prior to coming to this
3 meeting?

4 BETTY (BOYD) KING: Yes, wouldn't that be nice?

5 SANDY FRALEY: Yes.

6 LES ARRINGTON: Yeah. Okay.

7 MASON BRENT: So, we don't have to sit here and go
8 through this.

9 LES ARRINGTON: I apologize for that. Normally we
10 would have. When we got them finished mid-week last week and
11 started reviewing them, oops, we found a mistake. So, we had
12 to go back and redo them and they were just finished over the
13 weekend this time.

14 BENNY WAMPLER: The process calls for that to where
15 we have time and, like I say we didn't try to hold them for
16 the Board procedure this time that the Board had to approve,
17 but we were testing the procedure to see how it would work
18 and it appears that it is going to expedite. But ideally,
19 yes, they would have the numbers at least a week in advance.

20 MASON BRENT: Right.

21 BENNY WAMPLER: And look at them and resolve those
22 so that when we come here, we're getting numbers plugged into
23 the order that we're actually approving without having to go
24

1 back. In this case what...what we are approving is that they
2 will be able to take...take the numbers back and verify them.
3 If they agree with them, they'll send us a letter saying so.
4 If they don't, they will be set for the next month's docket
5 to resolve those discrepancies.

6 MASON BRENT: I just like it better when they come
7 here in agreement.

8 BENNY WAMPLER: Me too.

9 SANDY FRALEY: And so do we.

10 BENNY WAMPLER: Thank you very much. Are your other
11 parties here?

12 SANDY FRALEY: I believe Ms. Henderson is here.

13 BENNY WAMPLER: Everybody okay to go ahead and call
14 those---?

15 MAX LEWIS: Yeah.

16 BENNY WAMPLER: ---and get those...and then we'll
17 take a break after that? The next item on the agenda the
18 Board will consider is an application filed by Torch Energy
19 Advisors, I'm going back now, and incorporated Gayle
20 Henderson, Ralph Addison, Helen McGrady, Joe Addison, Evelyn
21 Massey and Coal Mountain Mining Limited Liability
22 Partnership, LLP, docket number VGOB-92-02/18-0183-02. And I
23 believe you said the other one can be consolidated as well.

24

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1 Docket number VGOB-92-02/18-0184-02?

2 SANDY FRALEY: That is correct.

3 BENNY WAMPLER: We'd ask the parties that wish to
4 address the Board in these matters to come forward at this
5 time, please. If you will, introduce yourselves for the
6 records, please.

7 SANDY FRALEY: Again, I'm Sandy Fraley here on
8 behalf of Jill Harrison who represents Torch Energy, The
9 Addison heirs and Coal Mountain Mining in these matters.
10 With me today, I have Gayle Henderson who is president and
11 will testify on behalf of the Addison heirs and, again, also
12 Mr. George Williams who...Williams who is here with Coal
13 Mountain Mining. Let's start off on these with Ms.
14 Henderson.

15

16 GAYLE HENDERSON

17 DIRECT EXAMINATION

18 QUESTIONS BY MS. FRALEY:

19 Q. If you could please again for the record,
20 just state your name.

21 A. I'm Gail Henderson.

22 Q. And are you one of the heirs of Ernest
23 Addison named in the application filed in these two matters?

24

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1 A. Yes, I am.

2 Q. Are you, Ralph Addison, Helen McGrady, Joe
3 Addison and Evelyn Massey the heirs of Ernest Addison?

4 A. Yes.

5 Q. Is it your understanding that prior orders
6 of the Board lists Myrtle Addison as an heir of Ernest
7 Addison who is entitled to a one-third of his interest.

8 A. Yes.

9 Q. Was Myrtle Addison your mother?

10 A. Yes.

11 Q. And is she now deceased?

12 A. Yes, since '94.

13 Q. Okay. As a result of your mother's death,
14 are you, Ralph Addison, Helen McGrady, Joe Addison and Evelyn
15 Massey the sole heirs of Ernest and Myrtle Addison and
16 entitled to a 100 percent interest in the Addison heir
17 tracts?

18 A. Yes.

19 Q. Okay. Do the Addison heirs claim ownership
20 of the oil and gas underlying certain tracts underlying the
21 units of South Longwall 5 and under South Longwall 6?

22 A. Yes.

23 Q. Okay. If you'll just take a quick look at
24

1 these application. This is the application that was filed in
2 South Longwall 5, showing Tract 16A. Is the Addison heirs
3 claiming the oil and gas?

4 A. Yes.

5 Q. And is that interest correctly shown forth
6 in that application?

7 A. Yes, to my knowledge.

8 Q. Okay. The application for South Longwall 6
9 is showing the Addison heirs. Tract 27A is claiming the oil
10 and gas in that tract. To your knowledge, is that---?

11 A. Yes, to my knowledge.

12 Q. ---set forth correctly? Okay. And to your
13 knowledge, does Hugh McRae Land Trust claim the ownership of
14 the coal underlying those same tracts?

15 A. Yes, I believe so.

16 Q. And have the Addison heirs and Hugh McRae
17 entered into an agreement resolving this conflict to the
18 coalbed methane and setting forth how royalties are to be
19 paid?

20 A. Yes.

21 Q. Okay. See what I did with the exhibits on
22 this one. If you can look at the exhibits for South Longwall
23 5. Looking at Exhibit number One, is that a copy of the

24

--

1 agreement which was entered into by the Addison heirs and the
2 Hugh McRae Trust to resolve the conflicting claims?

3 A. Yes, ma'am.

4 Q. Okay. To your knowledge, has Hugh McRae
5 conveyed its interest in all the royalty related to the
6 production of coalbed methane from these tracts to Torch
7 Energy?

8 A. I believe that's correct.

9 Q. Okay. And if you'll look at, let's see,
10 Exhibit Three, I believe. Is it your understanding that
11 that's the agreement by which that conveyance was made?

12 A. Yes, I believe it was.

13 Q. Based on the agreements between the Addison
14 heirs and Hugh McRae, are you asking the Board to amend its
15 orders to reflect that the Addison heirs and Hugh McRae,
16 Torch Energy are no longer conflicting claimants in these
17 tracts?

18 A. Yes, I believe so.

19 Q. Are you also asking the Board to enter an
20 order directing the escrow agent and the operator to account
21 for the funds deposited and to pay the Addison heirs and
22 Torch Energy the funds on deposit as well as all future
23 royalties for their interest in these units attributable to

24

--

1 these tracts?

2 A. Yes.

3 Q. Do the Addison heirs desire that their
4 portion of the funds be transferred actually into a trust
5 account of Penn Stuart for distribution to the Addison heirs?

6 A. Yes, ma'am.

7 SANDY FRALEY: Okay. Those are all the questions
8 that I have for Ms. Henderson.

9 BENNY WAMPLER: Does the unit operator have
10 everything they need to amend the supplemental order?

11 BOB LOONEY: Uh-huh. Yeah. I don't think we have a
12 copy of the agreement or anything yet. We would need
13 something to designate if...I mean, if they want future
14 royalties going into the trust account, then we would need
15 something from them.

16 SANDY FRALEY: Actually future royalties, and I
17 apologize for that, what we want to have are just the items
18 that are in disbursement coming into our trust account and
19 future royalties to be paid directly to the Addison heirs. I
20 just wanted to go ahead and put on the record that they were
21 in agreement with the moneys in escrow coming into our trust
22 account so that when we gave wire transfer instructions to
23 the bank to transfer to Penn Stuart's trust account, they

24

--

1 would understand that.

2 BOB LOONEY: I think we need something though, you
3 know, for this last supplemental order.

4 SANDRA RIGGS: In order to amend their Exhibit E to
5 their supplemental order they'll need, what, a copy of the
6 death certificate and...or I don't know what you normally get
7 in way of title documents on an heirship situation, but---.

8 SANDY FRALEY: It was my understanding that I
9 thought that information had previously been provided, but I
10 do have a copy---.

11 BOB LOONEY: I think we got all of the heirs. Yes,
12 we've got all the heirs and every...all we would need would
13 be a copy of the agreement that they've signed showing how
14 they want it---.

15 SANDRA RIGGS: Oh, the...the exhibit?

16 BOB LOONEY: Yeah. Yeah.

17 SANDY FRALEY: Okay.

18 BENNY WAMPLER: Do you have an extra copy of the
19 exhibits that you could give him today?

20 SANDY FRALEY: Yeah, I do.

21 BENNY WAMPLER: Okay.

22 SANDY FRALEY: We'll get you a copy of that exhibit.

23 BENNY WAMPLER: And I'm sorry. Is that all the

24

1 questions you have of this witness?

2 SANDY FRALEY: Yes, it is.

3 BENNY WAMPLER: Any questions from members of the
4 Board of this witness?

5 (No audible response.)

6 BENNY WAMPLER: All right. Call your next witness,
7 please.

8 SANDY FRALEY: Okay.

9

10 GEORGE WILLIAMS

11 DIRECT EXAMINATION

12 QUESTIONS BY MS. FRALEY:

13 Q. Again, could you please state your name for
14 the record?

15 A. My name is George Williams.

16 Q. And are you the managing partner of Coal
17 Mountain Mining Company Limited Liability Partnership, LLP?

18 A. Yes, ma'am.

19 Q. Okay. In pre...again in previous orders and
20 exhibits, Coal Mountain has been listed as Coal Mountain
21 Mining Company and Coal Mountain Trust. Are these entities
22 predecessors to Coal Mountain Mining Company Limited
23 Liability Partnership and basically all one and the same

24

--

1 entity?

2 A. Yes.

3 Q. Okay. Does Coal Mountain Mining claim the
4 ownership of the oil and gas underlying a certain tract under
5 the unit for South Longwall 5 and South Longwall 6?

6 A. Yes.

7 Q. Okay. Looking at these applications
8 quickly. Start with South Longwall 5 showing Tract 5. Is
9 Coal Mountain claiming the oil and gas, and to your
10 knowledge, Torch claims the coalbed methane royalties by
11 virtue of the ownership of the coal?

12 A. Yes.

13 Q. Okay. South Longwall 6, again, Tract 19,
14 Coal Mountain claiming based on oil and gas ownership and
15 Torch based on coal ownership?

16 A. Yes.

17 Q. Okay. To your knowledge, Hugh McRae Land
18 Trust has conveyed its interest in the royalty related to
19 Torch as set forth in...in the application, is that correct?

20 A. Yes.

21 Q. Okay. And to your knowledge, this is
22 pursuant to the agreement which is set forth, and let's go
23 back to where...what did I do with number 5, just to verify

24

--

1 that again? That will be Exhibit Three. That's the
2 assignment from Hugh McRae to Torch in the royalty interest?

3 A. Yes.

4 Q. Okay. And have Hugh McRae, Torch Energy and
5 Coal Mountain entered into an agreement resolving the
6 conflicting claims to the coalbed methane and setting forth
7 how royalties are to be paid?

8 A. Yes, they have.

9 Q. Okay. If you'll look at Exhibit Two in this
10 same package. Is this the agreement that the parties have
11 entered into?

12 A. It is.

13 Q. Okay. Based on these agreements, are Coal
14 Mountain and Torch Energy asking the Board to amend its
15 orders to reflect that Coal Mountain, Hugh McRae, Torch
16 Energy are no longer conflicting claimants to these units?

17 A. That's correct.

18 Q. Are you also asking the Board to enter an
19 order directing the escrow agent and the operator to account
20 for the funds on deposit and to pay Coal Mountain and Torch
21 Energy the funds on deposit as well as all future royalties
22 for their interest on these units?

23 A. Yes.

24

--

1 SANDY FRALEY: Okay. Those are all the questions
2 that I have of Mr. Williams.

3 BENNY WAMPLER: Any questions from members of the
4 Board?

5 (No audible response.)

6 BENNY WAMPLER: We'll go through the orders like we
7 did. Do you have another sheet so that---?

8 LES ARRINGTON: You already have South Longwall 6.

9 BENNY WAMPLER: We have...we have...we have 6. We
10 need 5.

11 (Les Arrington hands out spreadsheets.)

12 (Sandy Fraley confers with Gail Henderson.)

13 BENNY WAMPLER: Do you have anything to offer in way
14 of clarification before we get started with this, Mr.
15 Arrington?

16 LES ARRINGTON: No, I don't.

17 SANDRA RIGGS: With respect to the proposed order
18 for the South Longwall 5 drilling unit, docket 0183. The
19 first change is that the unit operator has acknowledged that
20 they have the information necessary to amend the supplemental
21 order in its Exhibit E to reflect that Myrtle Addison is
22 deceased and that a 100 percent of her interest has passed to
23 the five heirs named in the application; and, therefore, the
24

1 application involves a 100 percent of the money attributable
2 to Tract 16A as opposed to two-thirds of that...of those
3 funds. The three part letter is dated 6/25/99, and in the
4 charts on page three of the proposed, with respect to Tract 5
5 is a 5.9710 acre tract representing 1.32549 percent of the
6 drilling unit. Funds on deposit \$4,912.42. With respect to
7 Tract 16A, it is a 1.79 acre tract representing 0.39736
8 percent of the drilling unit. Funds on deposit \$1,291.64.
9 Footnote two will now come out. And the accounting is as of
10 June 30th, 1999. With respect to the South Longwall 6
11 drilling unit, docket 0184, the same comments apply with
12 respect to the Addison heirs. There will be an amended
13 supplemental order deleting Myrtle Addison as deceased and
14 showing the five heirs named as the applicant as entitled to
15 a 100 percent of the funds on deposit for Tract 27A. The
16 three part letter is dated June 25th, '99. On page three in
17 the chart for Tract 19, it's a 32.476 acre tract representing
18 17.46820 percent of the drilling unit. Funds on deposit
19 \$60,213.63. With respect to Tract 27A, it's a 2.563 acre
20 tract representing 1.37859 percent of the drilling unit.
21 Funds on deposit \$4,917.68. Again, footnote two will come
22 out and the accounting is as of June 30th, 1999.

23 SANDY FRALEY: Those appear to be fine with me.

24

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1 Again, subject to the same request that we be allowed to take
2 them back and review those and also same as before, I guess,
3 I should introduce the exhibits in both of these since we
4 didn't go through both of those, so that we have all the
5 exhibits for both South Longwall 5 and South Longwall 6.

6 BENNY WAMPLER: They're accepted. Any other
7 questions from members of the Board?

8 (No audible response.)

9 BENNY WAMPLER: Do I have a motion to approve these
10 applications?

11 MAX LEWIS: I make a motion that we approve as
12 presented.

13 MASON BRENT: Second.

14 BENNY WAMPLER: Motion is seconded. Any further
15 discussion?

16 (No audible response.)

17 BENNY WAMPLER: All in favor signify by saying yes.

18 (All members signify yes.)

19 BENNY WAMPLER: Opposed say no.

20 (No audible response.)

21 BENNY WAMPLER: You have approval. Thank you.

22 SANDY FRALEY: Thank you.

23 LES ARRINGTON: Thank you.

24

--

1 BENNY WAMPLER: We'll take a ten minute recess while
2 the other parties get set up.

3 (Break.)

4 BENNY WAMPLER: So, we have a request to continue
5 14, 15, 16 and 17 and 21, 22, 23 and 24. In order to allow
6 time to affect a lease?

7 MARK SWART: To try and affect a lease, yes.

8 BENNY WAMPLER: Without objection, those are
9 continued. The next item on the agenda, is the Board will
10 consider a petition from Pocahontas Gas Partnership for
11 rehearing for pooling of a coalbed methane unit identified as
12 W-47. This is docket number VGOB-98-11/17-0699-01. We'd ask
13 the parties that wish to address the Board in this matter to
14 come forward at this time.

15 MARK SWARTZ: Les Arrington and Mark Swartz for
16 Pocahontas Gas Partnership.

17 BENNY WAMPLER: The record will show there are no
18 others. You may proceed.

19 MARK SWARTZ: We've got some exhibits here.

20 (Les Arrington hands out exhibits.)

21 MARK SWARTZ: Okay. W-47 was a unit that was pooled
22 in November of '98 and at the time it was pooled...the reason
23 we're back here with an old one, is at the time it was pooled

24

--

1 we...we referred to a group of heirs as the Fred Smith heirs
2 and actually it should have been the Frank Smith heirs. So,
3 we're back here to straighten that out and I believe...Les,
4 you've also obtained some leases in the meantime so the
5 percentage may have changed a little bit and---?

6 LES ARRINGTON: It has.

7 MARK SWARTZ: ---and identified more of the heirs,
8 is that correct?

9 LES ARRINGTON: It has.

10 MARK SWARTZ: So, that...but that's the reason we're
11 back. Let's go ahead here then. You need to be sworn, I
12 would imagine.

13 (Witness is duly sworn.)

14

15 LES ARRINGTON

16 having been duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 QUESTIONS BY MR. SWARTZ:

20 Q. What's your name?

21 A. Leslie K. Arrington.

22 Q. Who do you work for?

23 A. Consol.

24

--

1 Q. And what is your title with them?

2 A. Permit specialist.

3 Q. Did you prepare the notice of hearing and

4 the application, and either prepare, or cause to be prepared,

5 the exhibits that have been filed with the Board today

6 concerning the repooling or modification of unit W-47?

7 A. Yes, I did.

8 Q. Okay. And this is an Oakwood I unit?

9 A. Yes.

10 Q. And have you passed out today spreadsheets

11 to the Board members?

12 A. Yes, I did.

13 MARK SWARTZ: Okay. This is a kind of a sheet that

14 Les and I have been using. I thought it would be helpful to

15 just copy it and let you have it. It summarizes some of the

16 pertinent information that the testimony is directed to. It

17 has the five units that we're going to be pool...or trying to

18 pool today starting with W-47.

19 Q. Les, with regard to the spreadsheet, does W-

20 47 and the other units that are listed here set forth

21 publication information, mailing, standing, the amount of

22 int...the kind of interest to be pooled and the amount of

23 interest to be pooled with regard to each of the units at

24

1 issue today?

2 A. Yes, it does.

3 Q. Okay. And these numbers are pulled from the
4 application and exhibits in each instances, is that correct?

5 A. Yes, it is.

6 Q. Okay. With regard to W-47, could you just
7 work your way across and indicate the information...the
8 relevant information that the Board needs concerning W-47?

9 A. Yes. This...this was published in the
10 Bluefield Daily Telegraph on June 18th, 1999. The mail
11 notice was on 6/18/99. We have a 100 percent of the
12 coalbed...coal...coalbed methane leased. 79.30...38921
13 percent of the oil and gas leased. And we're seeking to pool
14 20.61079 percent of the oil and gas interest. There is an
15 existing well on this unit. CBM/PGP W-47 permit number 4007.
16 That permit was issued on November the 5th, 1998. The well
17 was drilled to a total depth of 2100...2,101 feet at an
18 estimated cost of \$237,979.10.

19 Q. And this...the applicant here is Pocahontas
20 Gas Partnership?

21 A. Yes, it is.

22 Q. Okay. And is Pocahontas Gas Partnership a
23 Virginia General Partnership?

24

--

1 A. Yes.

2 Q. Are the two partners in that partnership
3 Consolidation Coal Company and Conoco, Inc.?

4 A. Yes.

5 Q. Who is it that the application seeks to have
6 appointed as designated operator?

7 A. Pocahontas Gas Partnership.

8 Q. Is PGP authorized to do business in the
9 Commonwealth?

10 A. Yes, it is.

11 Q. Has it registered with the DM...with the
12 Department of Mines, Minerals and Energy and does it have a
13 blanket bond on file as required by law?

14 A. Yes.

15 Q. Are the names of all the respondents listed
16 in Exhibit B3?

17 A. Yes, they are.

18 Q. You've already indicated when you mailed to
19 them, correct?

20 A. Yes, I have.

21 Q. And for every respondent listed on B-3 that
22 you have an address, did you send certified mail?

23 A. We did.

24

1 Q. Have you filed the proof of mailing and
2 related exhibits with the Board and Mr. Fulmer today?

3 A. Yes, I have.

4 Q. Do you wish to add any respondents?

5 A. No.

6 Q. Do you wish to subtract any by dismissing
7 them?

8 A. No.

9 Q. When you published as you previously
10 indicated, did you publish the notice of hearing?

11 A. Yes, we did.

12 Q. Okay. Could you describe the lease terms
13 that PGP has been offering in this area and, in fact, to
14 folks who have leased in this unit?

15 A. Yes. It's a one-eighth royalty, a five year
16 term.

17 Q. Is there a rental?

18 A. Yes. A \$1 per acre. I'm sorry.

19 Q. And how long is the rental payable?

20 A. Five years.

21 Q. Okay. And after production commences, what
22 generally would the leases provide with regard to the rental?

23 A. It would stop.

24

1 Q. And the royalty would be payable at that
2 point?

3 A. That's correct.

4 Q. Would you recommend those terms to the Board
5 in the event the unit is pooled as terms to be inserted in
6 any order concerning a deemed to have lease provision?

7 A. Yes, we would.

8 Q. This is an eighty acre frac unit?

9 A. Yes, it is.

10 Q. Under Oakwood I?

11 A. Yes.

12 Q. And you seek...you're seeking to pool the
13 seams from the tiller on down?

14 A. Yes, we are.

15 Q. Okay. And if you turn to Exhibit B3 in your
16 application, there's a final column which is described as
17 interest in unit. Do you see that?

18 A. That's correct.

19 Q. And for purposes of calculating royalty, or
20 calculating what the carried interest computation might be,
21 or the contribution if there's participation is that the
22 relevant percentage---?

23 A. Yes, it is.

24

1 Q. ---for each of the people that are being
2 pooled?
3 A. It is.
4 Q. Okay. There's one well currently in this
5 unit, correct?
6 A. It is. Yes.
7 Q. Are there any more contemplated at this
8 time?
9 A. No.
10 Q. And did that well require a location
11 exception?
12 A. No.
13 Q. Okay. Would you recommend the plan for
14 development of the coalbed methane in this unit that's
15 depicted in the exhibits to the application to the Board as
16 reasonable way to develop coalbed methane and a reasonable
17 way to protect the correlative rights of the owners of the
18 methane?
19 A. Yes.
20 Q. The only other point I would make is that
21 the only folks who would be required to have an election here
22 would be the people that are being pooled as Frank Smith
23 heirs?

24

--

1 A. That's correct.

2 Q. And the people that were previously...their
3 interest have not...their percentage of interest has not
4 changed?

5 A. It did not.

6 Q. That's all I have.

7 BENNY WAMPLER: Any questions from members of the
8 Board? Mr. Fulmer.

9 TOM FULMER: I just have a question on your Exhibit
10 A, page two. You've got two different percentages there and
11 I understand probably 20 percent of the 699.

12 LES ARRINGTON: Yes.

13 TOM FULMER: What was 699-01 and 15 percent?

14 LES ARRINGTON: Okay. The original application 0699
15 there was 20.61079 percent pooled. This application 01
16 represents 15.55 percent of that.

17 TOM FULMER: For the Franklin---?

18 LES ARRINGTON: Frank Smith heirs, yes.

19 TOM FULMER: Okay.

20 SANDRA RIGGS: So, the number that we use instead of
21 this 20.6107 whatever on the chart is really 15.55 for those-
22 --?

23 MARK SWARTZ: It depends on how you express it. I
24

1 mean the total interest that was required to be pooled was
2 20.61079. This modification only affects a part of that.
3 But I...you know...you know, you could pick either number,
4 Sandy, as long as you describe it.

5 SANDRA RIGGS: Okay.

6 BENNY WAMPLER: Other questions?

7 (No audible response.)

8 BENNY WAMPLER: Do you have anything further?

9 MARK SWARTZ: No.

10 BENNY WAMPLER: Motion to approve?

11 MAX LEWIS: I make a motion that we approve it.

12 DENNIS GARBIS: I second.

13 BENNY WAMPLER: The motion is seconded. Any further
14 discussions?

15 (No audible response.)

16 BENNY WAMPLER: All in favor signify by saying yes.

17 (All members signify yes.)

18 BENNY WAMPLER: Oppose say no.

19 (No audible response.)

20 BENNY WAMPLER: You have approval. The next item on
21 the agenda is a petition from Pocahontas Gas Partnership for
22 a rehearing for a pooling on a coalbed methane unit
23 identified as 0-37. Relief sought in the application is the
24

1 addition of respondents to those identified in the original
2 pooling application. Today's docket number VGOB-98-16/16-
3 0669-01. We'd ask the parties that wish to address the Board
4 in this matter to come forward at this time.

5 MARK SWARTZ: Les Arrington and Mark Swartz. We
6 have some exhibits with regard to this as well.

7 (Les Arrington passes out exhibits.)

8

9 LES ARRINGTON

10 having been duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 QUESTIONS BY MR. SWARTZ:

14 Q. You need to state your name again, Les.

15 A. Leslie K. Arrington.

16 Q. I'll just remind you that you're still under
17 oath. Who do you work for?

18 A. Pocahontas Gas.

19 Q. And who's the applicant with---?

20 A. I'm sorry. Consol.

21 Q. Okay. And who's the applicant with regard
22 to this application?

23 A. Pocahontas Gas.

24

--

1 Q. And did you in the course of your duties
2 prepare the notice of hearing, the application and either
3 prepare or cause to be prepared the exhibits that were
4 submitted as well?

5 A. Yes...yes, I did.

6 Q. Okay. Is Pocahontas Gas Partnership a
7 Virginia General Partnership?

8 A. Yes.

9 Q. And the two partners in that partnership are
10 Consolidation Coal Company and Conoco, Inc.?

11 A. Yes.

12 Q. Are you requesting that Pocahontas Gas
13 Partnership for designated the unit operator by the Board?

14 A. Yes, we are.

15 Q. Is Pocahontas Gas Partnership authorized to
16 do business in the Commonwealth, registered with the
17 Department of Mines, Minerals and Energy and does it have a
18 blanket bond on file as is required by law?

19 A. Yes, it does.

20 Q. Is this an eighty acre frac unit?

21 A. Yes, it is.

22 Q. And are you seeking to pool that unit from
23 the tiller on down?

24

--

1 A. Yes, we are.

2 Q. Again, with regard to the chart that you
3 passed out earlier today, does it have a roll pertaining to
4 this unit 0-37?

5 A. Yes, it does.

6 Q. And could you summarize or go
7 through...review that information with the Board?

8 A. Yes, I can. This unit 0-37 public...it was
9 mailed on June 18th, 1999. It was published on July 3rd,
10 1999.

11 Q. Okay. When it was published what...what did
12 the newspaper print it?

13 A. Blue...Bluefield Daily Telegraph. It was
14 published our notice of hearing.

15 Q. Okay.

16 A. We have leased 99.99360 percent of the coal.
17 99.99360 oil and gas interest and that does include some
18 forced pooled interest.

19 Q. Okay.

20 A. And we seek to pool 0.00640 percent of the
21 coal, oil and gas. We have 100 percent of the coal leased.
22 That is a mistake there. This has well number CBM/PGP 037 in
23 it. Permit number 3548. That permit was issued on 10/3/97.
24

1 It was drilled to a total depth of 2,178.40 feet at a cost
2 of \$248,762.57. You'll notice that we...we have just a
3 little spacing problem there and it appears that CBM S-32A is
4 also in there. It belongs to the next line down.

5 Q. The...what was the reason that you required
6 a modification with regard to this unit?

7 A. The five parties that are being pooled were
8 adverse and we inadvertently missed picking those up.

9 Q. So, the folks that are listed on Exhibit B3,
10 there's more than five people. Which are the five that are
11 new?

12 A. Okay. The five new ones are Virginia
13 (Brown) Palmer, Benjamin Patton Brown, Charlie...Charlie
14 Henry Brown, William David Brown and Eugene L. Brown, Jr.

15 BENNY WAMPLER: And what are you working from?

16 MARK SWARTZ: Yeah.

17 A. My notes of hearing. Just a second. Just a
18 minute.

19 (Les Arrington looks through his file.)

20 A. It appears the wrong B3 was attached to
21 this.

22 Q. Okay. The B3 that's attached is the same
23 one that---?

24

--

1 A. Is the original.

2 Q. ---was used the first time around?

3 A. Yeah. Yes, sir.

4 Q. Okay. And is what you're telling the Board

5 is that the folks that are listed in the notice of hearing,

6 the names of who you've just read---?

7 A. Uh-huh.

8 Q. ---are the people that you're seeking to

9 pool?

10 A. They are.

11 Q. And then if you'll refer to the exhibits

12 with regard to the mailing and certificate of notice which

13 you passed out to the Board this morning, what does that show

14 with regard to who was notified?

15 A. The proper persons were noticed...the five

16 parties. However, we did attach the wrong Exhibit B3.

17 Q. So, you're going to need to revise that?

18 A. Yes.

19 Q. Okay. It appears to me that although

20 there's an Exhibit E attached that the interest that you're

21 seeking to pool, you are not going to require escrow, is that

22 correct?

23 A. That is correct.

24

--

1 Q. Okay. Will you arrange then to file a
2 revised Exhibit B with the...B3 with the Board?

3 A. We will.

4 Q. The...with regard to the percentages, this
5 0064 percent, does that include the interest that you're
6 seeking to pool today?

7 A. The 64 percent?

8 Q. No, if you'll look at A page---.

9 A. (Inaudible). No, I don't believe that
10 includes the party shown on B3. I believe that is the total
11 of the five parties. I'm sure it is.

12 Q. My question...that's my question. Let's try
13 it again.

14 A. I'm sure it is.

15 Q. The A page two, does that reflect the total
16 percentage of the five parties that you---?

17 A. It does.

18 Q. ---noticed with this hearing?

19 A. It does.

20 Q. Okay. And it does not pertain to the
21 interest in the unit in B3 of the folks who were previously
22 pooled?

23 A. That's correct, it does not.

24

1 Q. Could you summarize for the Board the lease
2 terms that are being offered in the area and the lease terms
3 that were, in fact, offered to other folks in this unit who
4 have leased?

5 A. Yes. It's a \$1 per acre per year, a five
6 year term with a one-eighth royalty.

7 Q. Is there a rental?

8 A. A \$1.

9 Q. A \$1. Okay. The...would you recommend
10 those terms to the Board to be inserted in any deemed to have
11 leased provision?

12 A. Yes, we would.

13 Q. Okay. This unit has one well?

14 A. It does.

15 Q. Did not require a location exception?

16 A. No, it did not.

17 Q. Okay. Are you requesting that the only
18 election options be...that are to be afforded in any pooling
19 order that's entered at this point be to the five people
20 named in the notice of hearing?

21 A. Yes, that's correct.

22 Q. Okay. Would you recommend the plan that's
23 disclosed by the application and the related exhibits to the

24

--

1 Board as reasonable method to develop the coalbed methane
2 under this unit and a reasonable method for protecting the
3 correlative rights of the owners of the methane?

4 A. Yes, we do.

5 Q. That's all I have.

6 BENNY WAMPLER: Any questions from members of the
7 Board?

8 SANDRA RIGGS: I had a question. The unleased
9 interest being pooled, that is the interest of these five
10 parties is 00640 percent, is that right?

11 LES ARRINGTON: Yes, I believe it is.

12 SANDRA RIGGS: That's the total of---.

13 MARK SWARTZ: It's five times .00128.0064. We do
14 have the correct B3 with us today and I can shoot some copies
15 of it and give it to you. Essentially...not essentially. It
16 shows that the five respondents each have .00128 interest in
17 the unit, which then totals to the amount we just gave.

18 TOM FULMER: Does that...does that mean though that
19 the rest of the parties have been leased because---?

20 MARK SWARTZ: Pooled or leased.

21 TOM FULMER: Pooled or leased?

22 MARK SWARTZ: Right.

23 SANDRA RIGGS: Pooled under the original pooling
24

1 order.

2 TOM FULMER: Well, the reason...the only reason I
3 brought it up to you because you're still listing it as
4 unleased.

5 MARK SWARTZ: This is unleased, that's why we're
6 pooling. Okay, when Les was covering the ninety some percent
7 that we've acquired, he said it's leased and pooled by the
8 prior application. So, we're not, you know, this...these
9 five...the percentage associated with these---.

10 TOM FULMER: That's just five more you're adding on
11 to it.

12 MARK SWARTZ: Right.

13 TOM FULMER: Okay.

14 MARKS SWARTZ: So, that's the outstanding interest
15 that's not either leased or previously pooled.

16 SANDRA RIGGS: Or deemed to lease?

17 MARK SWARTZ: Right.

18 LES ARRINGTON: (Inaudible).

19 SANDRA RIGGS: Okay. Okay.

20 TOM FULMER: Okay.

21 MAX LEWIS: Who is the surface owner on that? I
22 can't find it.

23 MARK SWARTZ: You ought to be able to tell from
24

1 the...let's see. It looks like the well is on Tract 1.

2 TOM FULMER: One, three and four. One, three and

3 four.

4 MAX LEWIS: It don't say anything about the surface.

5 LES ARRINGTON: I just...you know, since I don't

6 have it listed here. I can not remember who the surface

7 actually belongs to on that well. I believe it's Consol

8 surface, but I really need something...some more information

9 to tell you that for sure.

10 BENNY WAMPLER: Will you supplement the record?

11 LES ARRINGTON: Yes.

12 BENNY WAMPLER: Any other questions from members of

13 the Board?

14 (No audible response.)

15 BENNY WAMPLER: Do you have anything further?

16 MARK SWARTZ: No.

17 MAX LEWIS: Yeah, I'd like to ask him, whereabouts

18 in the...this district...what district are you talking about?

19 LES ARRINGTON: Garden.

20 MAX LEWIS: Garden. Whereabouts is it located in

21 the Garden District? Whereabouts in Garden District? Do you

22 have any idea?

23 LES ARRINGTON: Close to Horn Mountain.

24

--

1 MARK SWARTZ: Well, it's South of Wolf Pen and North
2 of Little Hurricane, if that helps you. Be South...South and
3 a little East of Horn Mountain.

4 BENNY WAMPLER: Does that answer your question?

5 MAX LEWIS: No.

6 SANDRA RIGGS: The reason this isn't subject to
7 escrow is its fee ownership?

8 LES ARRINGTON: Yes, it is.

9 (Mark Swartz and Les Arrington confer among
10 themself.)

11 BENNY WAMPLER: We'll ask you to supplement the
12 record with the surface---.

13 LES ARRINGTON: Surface. Okay.

14 BENNY WAMPLER: ---identification. Mail a copy of
15 that to the Board members. Anything further? Any other
16 questions?

17 (No audible response.)

18 BENNY WAMPLER: Can I have a motion to approve?

19 MASON BRENT: So move.

20 DENNIS GARBIS: I second.

21 BENNY WAMPLER: Motion is seconded. Any further
22 discussion?

23 (No audible response.)

24

1 BENNY WAMPLER: All in favor signify by saying yes.
2 (All members signify yes.)
3 BENNY WAMPLER: Oppose say no.
4 (No audible response.)
5 BENNY WAMPLER: You have approval. Thank you. The
6 next item on the agenda is a petition from Pocahontas Gas
7 Partnership for pooling of a coalbed methane unit under the
8 Oakwood Coalbed Methane Gas Field orders and identified S-32.
9 This is docket number VGOB-99-07/20-0729; and we'd ask the
10 parties that wish to address the Board in this matter to come
11 forward at this time.
12 MARK SWARTZ: Mark Swartz and Les Arrington. I
13 would also ask that you consider consolidating the
14 application that you just called with number nineteen and
15 number twenty with the Department of Transportation as the
16 only respondent in these three applications.
17 BENNY WAMPLER: All right. Those are docket numbers
18 VGOB-99-07/20-0730 and VGOB-99-07/20-0731. Without
19 objection, they'll be consolidated. And I'd ask the parties
20 that wish to address the Board in these matters to come
21 forward at this time.
22 MARK SWARTZ: Mark Swartz and Les Arrington.
23 BENNY WAMPLER: The record will show there are no
24

1 others. You may proceed.

2 (Les Arrington passes out exhibits.)

3

4 LES ARRINGTON

5 having been duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 QUESTIONS BY MR. SWARTZ:

9 Q. Okay. And state your name.

10 A. Leslie K. Arrington.

11 Q. Who do you work for?

12 A. Consol.

13 Q. Okay. Who's the applicant in these three
14 applications?

15 A. Buchanan Production Company.

16 Q. Are all three of these applications,
17 applications to pool frac units under Oakwood I?

18 A. They are.

19 Q. Okay. The information with regard to these
20 three units is also reported on the spreadsheet that you
21 passed out to the Board today?

22 A. Yes, it is.

23 Q. Could you just start with S-32 and summarize
24

--

1 that or report that information to the Board?

2 A. Yes, for unit S-32, docket number, I'll use
3 the last four digits, 0729, was published in the Bluefield
4 Daily Telegraph on July 3rd, 1999. We mailed it out by
5 certified mail on June 18th, 1999. We have 100 percent of
6 the coal leased. 99.29687 percent of the oil and gas; and
7 we're seeking to pool 0.70313 percent of the oil and gas.
8 This S...unit S-32 has two wells within it. S-32A and S-32B.
9 S-32A's permit number is 3894 and, I believe that's a typo.
10 S-32B, I'm not sure that's the correct permit number, 1601.

11 TOM FULMER: (Inaudible).

12 A. I'm sorry, that is for well S-32.

13 TOM FULMER: Yeah.

14 A. Yes. Well S-32, permit number is 1601. It
15 was issued on 9/20/93. It was drilled to a depth of 1,776.81
16 feet. The average cost of the two wells, S-32 and S-32A, was
17 \$231,035.16. Well S-32A, it's permit number was 3894 issued
18 on 8/10/98.

19 Q. And with regard T...T-32 and T-34.

20 A. Oh, I'm sorry. T-32, it was published on
21 July 3rd, 1999. Again, it was mailed out on June 18th, 1999.
22 That unit we have 100 percent of the coal leased. We leased
23 99.38125 percent of the oil and gas. We're seeking to pool
24

1 0.61875 percent of the oil and gas. It also has one well,
2 well T-32A, permit number 3995. It was issued on 10/14/98.
3 Drilled to a total depth of 1,660.50 feet with a cost of
4 \$224,772.62. Unit T-34, it was published on July 3rd, 1999
5 in the Bluefield Daily Telegraph. We mailed it out on June
6 18th, 1999. 100 percent of the coal is leased. 99.52187
7 percent of the oil and gas was leased. Seeking to pool
8 0.47813 percent of the oil and gas interest. It has two
9 wells within that unit; well T-34A and T-34B. Well T-34A,
10 permit number is 3884. It was issued on 7/31/98. Well T-
11 34B, permit number 4054 was issued on December 18th, '98.
12 The average depth of the two wells of 1,726 feet...1,726.75
13 feet and an average cost of \$232,775.47.

14 Q. If we go back to the application for S-32,
15 and you indicated there might be a typo on your chart with
16 regard to the permit number. The application for S-32
17 actually sets forth the permit numbers of the two wells, do
18 it not?

19 A. Yes, it does.

20 Q. And is that correct?

21 A. Yes, it is.

22 Q. And what's the...what's the number?

23 A. 1061 and 3894.

24

--

1 Q. Okay. So, the 6 and the 0 were just
2 reversed on the chart?

3 A. Reversed.

4 Q. Correct?

5 A. I believe.

6 Q. Okay. The...in each of these applications,
7 you've stated that Buchanan Production Company is the
8 applicant. Is Buchanan Production Company a Virginia General
9 Partnership?

10 A. Yes, it is.

11 Q. And are the partners in Buchanan Production
12 Company, Appalachian Operators, Inc. and Appalachian Methane,
13 Inc.?

14 A. Yes, it is.

15 Q. And are both of those corporate partners
16 indirect subsidiaries of MCN Corporation?

17 A. Yes, they are.

18 Q. Is Buchanan Production Company authorized to
19 do business in the Commonwealth?

20 A. Yes, it is.

21 Q. Who is...in each of these applications, who
22 is it that is requested be appointed the designated operator?

23 A. Consol.

24

1 Q. Okay. Does Buchanan Production Company have
2 an arrangement with Consol, Inc. whereby Consol manages its
3 properties?
4 A. Yes, it does.
5 Q. Okay. And has specific authority been
6 delegated by Buchanan Production Company to Consol to
7 "Explore, develop and maintain the properties and assets of
8 Buchanan Production Company."?
9 A. Yes, it has.
10 Q. Okay. And have you tendered any exhibits
11 with regard to that to the Board today?
12 A. No, I haven't.
13 Q. Okay. But in the past, we have?
14 A. We have. That's right.
15 Q. And there's three individuals that are
16 generally responsible?
17 A. Yes, it is.
18 Q. Who would they be?
19 A. Claude Morgan as General Manager, I can't
20 remember...William Gillenwater as Land Manager and Randy
21 Alberter as regulatory manager.
22 Q. Okay. Do you work under Claude Morgan?
23 A. Yes, I do.
24

1 Q. Okay. The...do you wish to add any
2 respondents?
3 A. No.
4 Q. Do you wish to dismiss any?
5 A. No.
6 Q. In all three of these, the only respondent
7 is VDOT?
8 A. That's correct.
9 Q. And is it because they have acquired by
10 condemnation or otherwise portions of the minerals under
11 Route 460?
12 A. Actually, it's...I can't remember the State
13 Route Number.
14 Q. So, it's a State Route?
15 A. Yes, it is.
16 Q. Okay. But is it because they have acquired
17 rights-of-way for highways and that's why they're being
18 pooled here?
19 A. That's correct.
20 Q. And in some instances, those rights-of-way
21 caused them to acquire mineral interest?
22 A. It did.
23 Q. Okay. The...and are you seeking to pool an
24

1 eighty acre frac unit from the tiller on down?

2 A. Yes, we are.

3 Q. The terms...lease terms that you would

4 recommend to the Board would be what?

5 A. One-eighth royalty, a \$1 per acre per year

6 with a five year term.

7 Q. Is the interest in the unit set forth in

8 Exhibit B3?

9 A. Yes, it is.

10 Q. And with regard to each of the units?

11 A. Yes, it is.

12 Q. Okay. Would you recommend this...these

13 three pooling applications be approved by the Board to allow

14 the coalbed methane under these three units to be developed

15 and the ownership interest of the owners in the units to be

16 protected?

17 A. Yes, we would.

18 Q. That's all I have.

19 BENNY WAMPLER: Any questions from members of the

20 Board?

21 (No audible response.)

22 BENNY WAMPLER: I have a note here that the order

23 expired on the---.

24

1 SANDRA RIGGS: The old order.

2 BENNY WAMPLER: ---old order on the---.

3 SANDRA RIGGS: Docket 0154.

4 BENNY WAMPLER: ---T-32.

5 LES ARRINGTON: It probably did.

6 BENNY WAMPLER: And that there's \$76.66 in that

7 account. Can you verify that? Do you have that information?

8 LES ARRINGTON: I don't have that information with

9 me, no. I believe you'll find that unit had not been drilled

10 and that unit expired and then we've---.

11 SANDRA RIGGS: On the notices?

12 MARK SWARTZ: Probably.

13 BENNY WAMPLER: Right.

14 MARK SWARTZ: And that's why we're repooling.

15 SANDRA RIGGS: So, we'll need to transfer...we'll

16 need to combine those two escrow accounts?

17 LES ARRINGTON: I can't remember. I believe. I

18 believe the reason that unit was originally pooled was...I

19 have a Stickley---.

20 MARK SWARTZ: I bet that money belongs to the

21 Stickleys. I mean, some of that money should come out of

22 there. We need to look at that.

23 LES ARRINGTON: I believe that's what that was.

24

--

1 MARK SWARTZ: So, it would have been...see, we
2 didn't have...Ashland was contained and they had a Stickley
3 lease. And you notice the Stickley's interest is in...is in
4 these units and I suspect that money pertained to the
5 Stickley lease, we now have a Stickley lease and Ashland is
6 out of the picture. So, we need to look at that unit because
7 most of that bonus probably does not belong to VDOT, but
8 should come out for Stickley, I guess. We need to look at
9 it.

10 LES ARRINGTON: We need to look at it.

11 MARK SWARTZ: It certainly doesn't...you know, only
12 just some tiny---.

13 SANDRA RIGGS: Don't combine them?

14 MARK SWARTZ: ---piece of it would pertain
15 to...yeah, do not combine it and we'll let you know what
16 pertains to VDOT and you can combine that part of it, but I
17 guess we need to petition to pay the rest of it out.

18 TOM FULMER: You're not...you're not pooling any
19 coal interest?

20 LES ARRINGTON: No, we...our lease predates VDOT.

21 TOM FULMER: On here it shows them as being unleased
22 on your exhibit. You show a 100 percent interest.

23 LES ARRINGTON: Our coal lease predates that.

24

--

1 MARK SWARTZ: Well, I mean, if you look at...I mean,
2 when you take them one at a time, Tom, but if you'll look at
3 S-32 on the tract identification, VDOT has 75 percent of the
4 coal, oil and gas under Tract 5, for example, and Alfa
5 Stickley has 25 percent of the coal, oil and gas. So, I
6 mean, there is---.

7 TOM FULMER: Well, I mean, the way it is listed in
8 this exhibit here, VDOT has---.

9 MARK SWARTZ: Okay. Which unit are you looking at?

10 LES ARRINGTON: It's B3.

11 TOM FULMER: This is Exhibit B3.

12 MARK SWARTZ: No, no. Unit...which unit?

13 TOM FULMER: T-34.

14 MARK SWARTZ: 34.

15 TOM FULMER: The rest of them, I don't have any
16 problems with.

17 MARK SWARTZ: Okay. T-34.

18 BENNY WAMPLER: T-32 is showing VDOT coal and gas
19 oil as 75 percent on your exhibits, tract identification.

20 LES ARRINGTON: Now, which unit?

21 MARK SWARTZ: T-34 is what Tom is asking about.

22 LES ARRINGTON: Okay. T-34. Now, within that
23 reservation, there was two different types of reservations
24

1 when they done that and you'll notice one way Alfa Stickley
2 heirs has 75 percent of the coal, oil and gas and VDOT has 25
3 percent. We...you know, we didn't draft those exhibits and
4 then some of those...some of the other parts of that right-
5 of-way when they acquired from the Stickley heirs, they only
6 got 25 percent and why it was reversed...Bob Looney may be
7 able to tell you a little more about. He's read through
8 those exhibits, documents. But they were reversed at times.

9 MARK SWARTZ: Well, I guess, where I'm coming from,
10 Tom, is the B3 that I'm looking at for T-34 shows VDOT having
11 a coal interest and an oil and gas interest.

12 TOM FULMER: (Inaudible). And the thing is that
13 what...when you go to the other section, you show that you
14 own a 100 percent interest, but here you're showing you
15 unlease...they're unleased.

16 MARK SWARTZ: The other section.

17 BENNY WAMPLER: Are you talking about...where is it
18 in B3?

19 SANDRA RIGGS: These leased versus unleased
20 percentages.

21 MARK SWARTZ: In A, page two, is that what you're
22 saying?

23 LES ARRINGTON: Of which one, Tom?

24

--

1 BENNY WAMPLER: You're showing 100 percent of coal
2 owned or leased.

3 LES ARRINGTON: Okay. In which unit?

4 TOM FULMER: This is T-34 that I'm looking at.

5 LES ARRINGTON: Okay. Now, again, prior to this
6 right-of-way, the coal lease was already taken. So, and
7 then...and then the out sell of the coal, oil and gas
8 happened. So, we do have a 100 percent of the coal leased.

9 CLAUDE MORGAN: You've got coal leased, but not a
10 coalbed methane lease.

11 LES ARRINGTON: Not a coalbed methane lease.

12 MARK SWARTZ: And what Tom is saying is that we need
13 to modify A, page two at least with regard to T-34 because we
14 are missing a coalbed methane lease from this (inaudible)
15 percentage.

16 LES ARRINGTON: Up here.

17 MARK SWARTZ: I mean, this is correct. If you have
18 coal---.

19 LES ARRINGTON: Here.

20 MARK SWARTZ: ---it's covering a 100 percent of the
21 coal, but in terms of the CBM lease, we need to modify
22 Exhibit A, page two to indicate that there is an outstanding
23 .47813, I would imagine---.

24

--

1 LES ARRINGTON: Okay. Okay.

2 MARK SWARTZ: --of the CBM claim of the coal owners.

3 LES ARRINGTON: I gotcha.

4 BENNY WAMPLER: Wouldn't that also be the same for
5 T-32?

6 LES ARRINGTON: It should---.

7 MARK SWARTZ: May need to look. Yes, T-32 as well.

8 LES ARRINGTON: Uh-huh. They're both...they're
9 right. The other one is like it.

10 MARK SWARTZ: Okay.

11 BENNY WAMPLER: Any other questions?

12 (No audible response.)

13 BENNY WAMPLER: Do you have anything further?

14 MARK SWARTZ: No.

15 BENNY WAMPLER: Do I have a motion?

16 MASON BRENT: I move that we grant the applications.

17 DENNIS GARBIS: I second.

18 BENNY WAMPLER: Motion is seconded. Any further
19 discussion?

20 (No audible response.)

21 BENNY WAMPLER: All in favor signify by saying yes.

22 (All members signify yes.)

23 BENNY WAMPLER: Oppose say no.

24

1 (No audible response.)

2 BENNY WAMPLER: You have approval.

3 MARK SWARTZ: We'd like to file copies of the

4 revised 0-37.

5 BENNY WAMPLER: This is a good place to break for

6 lunch. Is everybody okay to break for lunch here?

7 (Everyone says yes.)

8 BENNY WAMPLER: Come back as soon as we can. We're

9 going to break for lunch. We've got all of yours, right?

10 MARK SWARTZ: I've got one more.

11 BENNY WAMPLER: Which one?

12 MARK SWARTZ: 25.

13 BENNY WAMPLER: That's got all of yours right now.

14 We're breaking for lunch.

15 (Lunch.)

16 BENNY WAMPLER: Okay. Are we ready?

17 (No audible response.)

18 BENNY WAMPLER: The next item on the agenda the

19 Board will consider is an appeal of the inspector's decision

20 rendered as an result of an informal fact finding conference

21 11399, David Roy McClanahan, et al. versus Consol,

22 Incorporated; docket number VGOB-99-07/20-0736. We'd ask the

23 parties that wish to address the Board in this matter to come

24

1 forward at this time.

2 MARK SWARTZ: Mark Swartz on behalf of Consol.

3 BENNY WAMPLER: Make sure that's not them. I don't
4 think it is. The others...the other party isn't here. Mr.
5 Fulmer, have you heard from Mr. McClanahan or his attorney?

6 TOM FULMER: I heard from Mr. Gray this morning and
7 Mr. Gray indicated that he had another hearing today and that
8 he was wondering when it would come on the agenda. I told
9 him it was later on into the agenda for the Board and that I
10 would tell the Chairman that he was at a hearing and he may
11 be late. That's about it. He didn't ask for a continuance
12 or anything.

13 BENNY WAMPLER: What's your pleasure, Board?

14 MASON BRENT: I move that we move on.

15 DENNIS GARBIS: Did he say he was going to show up?

16 TOM FULMER: He didn't say if he was or he wasn't.
17 He just said he had another hearing and that...he wanted to
18 know where he was on the agenda and I told him that I would
19 tell Mr. Wampler, that if at all possible, we would delay it
20 as much as possible.

21 DENNIS GARBIS: Well, we can go on to others and if
22 he shows up fine and if doesn't by the end of the day...

23 BENNY WAMPLER: All right. Is that okay with you?

24

--

1 MARK SWARTZ: Sure.

2 DENNIS GARBIS: 26.

3 BENNY WAMPLER: Okay. We'll move to the next item
4 on the agenda. We're considering a petition from Equitable
5 Production Company for pooling a coalbed methane unit under
6 the Nora Coalbed Methane Gas Field, identified as VC-4057;
7 docket number VGOB-99-07/20-0737. We'd ask the parties that
8 wish to address the Board in this matter to come forward at
9 this time.

10 JIM KISER: Mr. Chairman and members of the Board,
11 Jim Kiser on behalf of Equitable Production Company. Our
12 witnesses I know are here because they rode with me. Let me
13 see if I can go find them.

14 (Everyone talks while they wait on Mr. Kiser's
15 witnesses.)

16 JIM KISER: Our witnesses in this matter will be
17 Dennis Baker and Mr. Bob Dahlin. I'd ask that they be sworn
18 at this time.

19 (Witnesses are duly sworn.)

20

21

22

23

24

--

1 with all the...both the gas estate and coal estate owners
2 within the unit?

3 A. Yes.

4 Q. And as a result of those efforts, what is
5 the interest of Equitable in the gas estate in the unit?

6 A. The interest leased in the gas estate is
7 99.30 percent.

8 Q. And the interest of Equitable in the coal
9 estate?

10 A. The interest in the coal estate lease was
11 100 percent.

12 Q. Now, are all the unleased parties set out in
13 the Exhibit B which was attached to our application?

14 A. Yes.

15 Q. Now, subject to the filing of the
16 application, have you continued to attempt to reach an
17 agreement with any unleased parties?

18 A. Yes, we have.

19 Q. And as a result of these efforts, have you
20 been successful in obtaining any new leases?

21 A. No.

22 Q. Okay. So, then for purposes of the Board
23 order, should they issue on the unleased percentages or 0.7

24

--

1 percent of the gas estate remains unleased and the coal
2 estate is 100 percent under lease, correct?

3 A. Yes.

4 Q. Okay. We do have some unknown heirs
5 involved in Tract 2 of the gas estate. Were efforts made to
6 determine the names and address and whereabouts to any
7 successors to any deceased respondents?

8 A. Yes.

9 Q. And were reasonable and diligent efforts
10 made and sources checked to identify and locate unknown heirs
11 including primary sources such as deed records, probate
12 records, Assessor's record, Treasurer's records and secondary
13 sources such as telephone directories, city directories,
14 family and friends?

15 A. Yes, it was.

16 Q. Mr. Baker, in your professional opinion, was
17 due diligence exercised to locate each of the respondents
18 named in Exhibit B to the application?

19 A. Yes.

20 Q. Now, are the addresses set out in Exhibit B
21 the last known addresses for the respondents?

22 A. Yes.

23 Q. And are you requesting this Board to force
24

1 pool all unleased interest listed in Exhibit B?

2 A. Yes, we are.

3 Q. Are you familiar with the fair market value
4 of drilling rights in the unit here and in the surrounding
5 area?

6 A. Yes, I am.

7 Q. Could you advise the Board as to what those
8 are?

9 A. Yes, a \$5 per acre consideration, for a five
10 year term, one-eighth of eight-eighth royalty.

11 Q. Did you gain your familiarity by acquiring
12 oil and gas leases, coalbed methane leases and other
13 agreements involving the transfer of drilling rights in the
14 unit involved here and in the surrounding area?

15 A. Yes.

16 Q. In your opinion, do the terms you have
17 testified to represent the fair market value of and the fair
18 and reasonable compensation to be paid for drilling rights
19 within this unit?

20 A. Yes.

21 Q. Now, as to any respondents in Exhibit B who
22 remain unleased, do you request that the order allow the
23 following options with respect to their ownership interest
24

1 within the unit: one, participation; two, a cash bonus of \$5
2 per net mineral acre plus a one-eighth of eight-eighths
3 royalty; three, in lieu of such cash bonus, a one-eighth of
4 eight-eighths royalty share in the operation of the well on a
5 carried basis as a carried operator on the following
6 conditions: Such carried operator should be entitled to the
7 share of production from the tracts pooled accruing to his
8 interest exclusive of any royalty or overriding royalty
9 reserved in any leases, assignments thereof or agreements
10 relating thereto of such tracts, but only after the proceeds
11 applicable to his share equal - (A) 300 percent of the share
12 of such costs applicable to the interest of the carried
13 operator of a leased tract or portion thereof; or (B) 200
14 percent of the share of such costs applicable to the interest
15 of the carried operator of an unleased tract or portion
16 thereof?

17 A. Yes, that's correct.

18 Q. Do you recommend the Board order provide
19 that election by respondents be in writing and sent to the
20 applicant at Equitable Production Company, Eastern Region,
21 P. O. Box 1983, Kingsport, Tennessee 37662, Attention:
22 Dennis R. Baker, Regulatory?

23 A. Yes.

24

--

1 Q. And should this be the address for all
2 communications with the applicant concerning any force
3 pooling order?

4 A. Yes.

5 Q. Do you recommend that the order provide that
6 if no written elections is properly made by a respondent,
7 then such respondent shall be deemed to have elected to cash
8 royalty option in lieu of participation?

9 A. Yes.

10 Q. Should any unleased respondent be given
11 thirty (30) days from the date of the recording of the order
12 to file written elections?

13 A. Yes.

14 Q. If an unleased respondent elects to
15 participate, should they be given forty-five (45) days to pay
16 the applicant for their proportionate share of well costs?

17 A. Yes.

18 Q. Does the applicant expect any party electing
19 to participate to pay in advance that party's share of
20 completed well costs?

21 A. Yes.

22 Q. Should the applicant be allowed a hundred
23 and twenty (120) days following the recordation date of the
24

1 Board order, and thereafter annually on that date, until
2 production is achieved to pay, or tender any cash bonus,
3 becoming due under order?

4 A. Yes.

5 Q. Do you recommend that if the...the order
6 provide that if the respondent elects to participate, but
7 fails to pay the their proportionate share of well costs
8 satisfactory to the applicant for payment of those costs,
9 then their election to participant should be treated as
10 having been withdrawn and void and such respondent should be
11 treated just as if not initial election had been filed under
12 the order?

13 A. Yes.

14 Q. Do you recommend that the order provide that
15 where a respondent elects to participate, but defaults in
16 regard to the payment of well costs, any cash sum becoming
17 payable to such respondent be paid within sixty (60) days
18 after the last date on which such respondent could have been
19 paid or made satisfactory arrangements for the payment of the
20 those costs?

21 A. Yes.

22 Q. Okay. In this particular well, we have both
23 conflicting claimants and unknown heirs. So, do you

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1 recommend that the Board create an escrow account into which
2 all costs or proceeds attributed to the unknown interest
3 and/or conflicting interest shall be held for the
4 respondent's benefit until such funds can be paid to the
5 party by order of the Board or until the title defect or
6 conflicting claim is solved to the operator's satisfaction?

7 A. Yes, we do.

8 Q. Mr. Baker, who should be named the operator
9 under the force pooling order?

10 A. Equitable Production Company.

11 JIM KISER: All I have of this witness at this time,
12 Mr. Chairman.

13 BENNY WAMPLER: Any questions from members of the
14 Board of this witness?

15 (No audible response.)

16 BENNY WAMPLER: Call your next witness.

17

18 ROBERT A. DAHLIN, II

19 having been duly sworn, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 QUESTIONS BY MR. KISER:

23 Q. Mr. Dahlin, state your name for Board, who
24

25

1 you are employed by and in what capacity.

2 A. My name is Robert A. Dahlin, II. I'm
3 employed by Equitable Production Company, as a Production
4 Specialist.

5 Q. And qualifications in that area have been
6 previously accepted by the Board?

7 A. Yes, that's correct.

8 Q. And do your responsibilities include the
9 land involved here for this unit and in surrounding area?

10 A. Yes.

11 Q. Are you familiar with the proposed plan of
12 exploration and development for this well?

13 A. Yes.

14 Q. Now, our application as originally filed
15 stated the depth for VC-4057 as 1800 feet. We need to
16 correct that. Mr. Dahlin, I think, actually the correct
17 total depth of the proposed well is 2,360 feet---?

18 A. That's correct.

19 Q. ---is that correct? Thank you. And this
20 will be sufficient to penetrate and test any common sources
21 as supplied in the subject formations?

22 A. Yes.

23 Q. And what are the estimated reserves of the
24

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1 unit for 4057?

2 A 350,000,000 cubic feet.

3 Q. And are you familiar with the well costs for the proposed well

4 under the plan of development?

5 A. Yes, I am.

6 Q. Has an AFE been reviewed, signed and submitted to the Board as

7 Exhibit C to the application?

8 A. Yes.

9 Q. Was this AFE prepared by an engineering department

10 knowledgeable in the preparation of AFEs and knowledgeable in regard to well costs in this

11 area?

12 A. Yes.

13 Q. In your professional opinion, does this AFE represent a reasonable

14 estimate of the well costs for the proposed well under the plan of development?

15 A. Yes, it does.

16 Q. Could you state for the Board both the dry hole costs and

17 completed well costs for VC-4057?

18 A. The dry hole costs are \$86,902, with the completed well cost of

19 \$180,300.

20 Q. And do these costs anticipate a multiple completion?

21 A. Yes, it does.

22 Q. And does AFE include a reasonable charge for supervision?

23 A. Yes.

24

1 Q. In your professional opinion, will the granting of this application
2 be in the best interest of conservation, the prevention of waste and the protection of
3 correlative rights?

4 A. Yes.

5 JIM KISER: Nothing further of this witness at this time, Mr. Chairman.

6 BENNY WAMPLER: Any questions of this witness?

7 (No audible response.)

8 BENNY WAMPLER: Do you have anything further?

9 JIM KISER: We'd ask that the Board approve the application as submitted
10 with change on the depth.

11 BENNY WAMPLER: Okay. That was correct on the AFE?

12 JIM KISER: Right. The AFE is correct.

13 BENNY WAMPLER: Is there a motion?

14 MAX LEWIS: I make a motion we approve.

15 DENNIS GARBIS: I second.

16 BENNY WAMPLER: Motion is seconded. Any further discussions?

17 (No audible response.)

18 BENNY WAMPLER: All if favor, signify by saying yes.

19 (All members signify yes)

20 BENNY WAMPLER: Opposed, say no.

21 (No audible response.)

22 BENNY WAMPLER: You have approval. The next item on the agenda is a
23 petition from Equitable Production Company for pooling of a coalbed methane unit under
24

1 the Roaring Fork Field Order and identified as VC-4086. This is docket number VGOB-
2 99-07/20-0738. We'd ask the parties that wish to address the Board in this matter to come
3 forward at this time.

4 JIM KISER: Mr. Chairman and members of the Board, Jim Kiser, again, on
5 behalf of Equitable Production Company. Our witnesses in this matter will again Mr. Baker
6 and Mr. Dahlin. I'll remind that they've been sworn; and we'll start with Mr. Baker.

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13 DENNIS R. BAKER
14 having been duly sworn, was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 QUESTIONS BY MR. KISER:

18 Q. If you would, Mr. Baker, again state your
19 name for the record, who you are employed by and in what
20 capacity?

21 A. My name is Dennis R. Baker. I'm employed by
22 Equitable Production Company as Senior Landman.

23 Q. And do your responsibilities include the
24

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1 land involved here in this unit and in the surrounding area?

2 A. Yes, it does.

3 Q. And you are familiar with Equitable's
4 application seeking a pooling order for EPC well number VC-
5 4086, which is dated June 17th, 1999?

6 A. Yes.

7 Q. Is Equitable seeking to force pool the
8 drilling rights underlying the unit as depicted at Exhibit A
9 to the application?

10 A. Yes, we are.

11 Q. And does the location proposed for well
12 number VC-4086 fall within the Board's order for the Roaring
13 Fork Coalbed Gas Field?

14 A. Yes.

15 Q. Now, prior to the filing the application,
16 did you make an attempt to negotiate a voluntary lease
17 agreement with each of the respondents named in Exhibit B?

18 A. Yes.

19 Q. And does Equitable own drilling rights in
20 the unit involved here?

21 A. Yes, we do.

22 Q. Okay. What is the interest of Equitable in
23 the gas estate within the unit?

24

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1 A. The interest leased in the gas estate is
2 99.566 percent.

3 Q. And the interest leased in the coal estate
4 within the unit?

5 A. The coal estate leased to Equitable is 100
6 percent.

7 Q. Okay, and all the unleased parties set out
8 in Exhibit B to the application?

9 A. Yes, they are.

10 Q. And subsequent to the filing of your
11 application, do you continue to attempt to reach an agreement
12 with the parties that constitute the small percentage that
13 remains unleased, that being four undivided interests within
14 Tract 4?

15 A. Yes.

16 Q. Were you successful in obtaining any
17 additional leases since we filed the application

18 A. No.

19 Q. Okay. So, based on that, would it be
20 correct to state that the unleased interest that remains
21 within the gas estate is 0.434 percent?

22 A. That's correct.

23 Q. And the coal estate was 100 percent leased?

24

1 A. Yes.

2 Q. Okay. Are the addresses set out in Exhibit

3 B to the application the last known addresses for the

4 respondents?

5 A. Yes, they are.

6 Q. Are you requesting this Board to force pool

7 any and all unleased interest listed in Exhibit B to the

8 application?

9 A. Yes.

10 Q. Are you familiar with the fair market value

11 of drilling rights in the unit here and in the surrounding

12 area?

13 A. Yes, I am.

14 Q. Could you advise the Board as to what those

15 are?

16 A. A five \$5 per acre consideration, a five

17 year term, one-eighth of eight-eighths royalty.

18 Q. And did you gain this familiarity by

19 acquiring oil and gas leases, coalbed methane leases and

20 other agreements involving the transfer of drilling rights in

21 the unit involved here and in the surrounding area?

22 A. Yes.

23 Q. In your opinion, do the terms you've

24

1 testified to represent the fair market value of and the fair
2 and reasonable compensation to be paid for drilling rights
3 within this unit?

4 A. Yes.

5 JIM KISER: Mr. Chairman and members of the Board,
6 at this time, we'd ask that the testimony that was previously
7 taken in VGOB docket number 99-07/20-0737 that being the
8 testimony for VC-4057 regarding the election options afforded
9 any unleased parties and their different time periods in
10 which to reply to those options be incorporated.

11 BENNY WAMPLER: They'll be incorporated. We're
12 missing page three of this Exhibit B. I don't know if that's
13 a copy error or---.

14 JIM KISER: You are?

15 BENNY WAMPLER: ---or what. Do you have it?

16 JIM KISER: Yeah, we've got some.

17 DENNIS R. BAKER: We can make some copies.

18 BENNY WAMPLER: Right. That's fine. I just
19 wondered.

20 JIM KISER: Have you got them with your Affidavit of
21 Mailing? That's the last thing I've got.

22 BENNY WAMPLER: We may have it. (Inaudible).

23 JIM KISER: Yeah. Check your Affidavit of Mailing.

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1 TOM FULMER: You sent it two different times.

2 BENNY WAMPLER: Do you have it?

3 TOM FULMER: Yeah, I've got it.

4 BENNY WAMPLER: Would you make us copies of that,
5 please, page three? We have the other. We just need page
6 three.

7 TOM FULMER: Three of four?

8 BENNY WAMPLER: Yes. You can go ahead.

9 JIM KISER: Do you want us to continue on?

10 BENNY WAMPLER: Yes. You're not making any changes
11 to it anyway.

12 JIM KISER: No.

13 Q. Mr. Baker, we do have conflicting claimants
14 to the gas and coal under this unit. So, based on that, do
15 you recommend that the order provide that the operator pay
16 into an escrow account created by this Board, all costs or
17 proceeds attributed to the conflicting interest where they
18 shall be held for the respondents benefit until such funds
19 can be paid to the party by order of the Board, or until the
20 title defect or conflicting claim is solved to the operator's
21 satisfaction?

22 A. Yes.

23 Q. And who should be named the operator under
24

1 any force pooling order?

2 A. Equitable Production Company.

3 JIM KISER: Nothing further of this witness at this
4 time, Mr. Chairman.

5 BENNY WAMPLER: Any questions from members of the
6 Board?

7 (No audible response.)

8 BENNY WAMPLER: Call your next witness.

9

10 ROBERT A. DAHLIN, II

11 having been duly sworn, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 QUESTIONS BY MR. KISER:

15 Q. Mr. Dahlin, if you would again state your
16 name for the Board, who you're employed by and in what
17 capacity?

18 A. Robert A. Dahlin, II. I'm employed by
19 Equitable Production Company, as Production Specialist.

20 Q. And you're familiar with the land involved
21 in this unit and in the surrounding area?

22 A. Yes, I am.

23 Q. And you're familiar with the proposed plan

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1 of exploration and development for this unit?

2 A. That's correct.

3 Q. What's the total depth of the proposed well

4 under the plan of development?

5 A. 1800 feet.

6 Q. And this will be sufficient to penetrate and

7 test any common sources of supply in the subject formations?

8 A. Yes.

9 Q. What are the estimated reserves of this unit

10 for VC-4086?

11 A. 400,000,000 cubic feet.

12 Q. And are you familiar with the well costs for

13 the proposed well under the plan of development?

14 A. Yes.

15 Q. Has an AFE been reviewed, signed and

16 submitted to the Board as Exhibit C to the application?

17 A. Yes, it has.

18 Q. Was this AFE prepared by an engineering

19 department knowledgeable in the preparation of the AFE's and

20 knowledgeable in regard to well costs in this particular

21 area?

22 A. Yes.

23 Q. And does this AFE represent a reasonable

24

1 estimate of the costs for the proposed well under the plan of
2 development?

3 A. It does.

4 Q. And what are those costs for both the
5 dryhole and completed well?

6 A. The dry hole costs are \$67,640; with
7 completed well costs of \$162,700.

8 Q. Do these costs anticipate a multiple
9 completion?

10 A. Yes.

11 Q. Does your AFE include a reasonable charge
12 for supervision?

13 A. Yes.

14 Q. In your professional opinion, will the
15 granting of this application be in the best interest of
16 conservation, the prevention of waste and the protection of
17 correlative rights?

18 A. Yes, it would.

19 JIM KISER: Nothing further of this witness at this
20 time, Mr. Chairman.

21 BENNY WAMPLER: Any questions from members of the
22 Board?

23 (No audible response.)

24

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1 BENNY WAMPLER: Do you have anything further?

2 JIM KISER: We'd ask that the application be

3 approved as submitted.

4 BENNY WAMPLER: Is there a motion?

5 MAX LEWIS: I make a motion we approve.

6 MASON BRENT: Second.

7 BENNY WAMPLER: Motion is seconded. Any further

8 discussion?

9 (No audible response.)

10 BENNY WAMPLER: All in favor, signify by saying

11 yes.

12 (All members signify yes.)

13 BENNY WAMPLER: Opposed, say no.

14 (No audible response.)

15 BENNY WAMPLER: You have approval. The next item on

16 the agenda is a petition from Equitable Production Company

17 for pooling of a coalbed methane unit under the Roaring Fork

18 Coalbed Gas Field Order and identified as VC-4087; docket

19 number VGOB-99-07/20-0739. We'd ask the parties that wish to

20 address the Board in this matter to come forward at this

21 time.

22 JIM KISER: Mr. Chairman, Jim Kiser, on behalf of

23 Equitable Production Company. Our witnesses again will be

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1 Mr. Baker and Mr. Dahlin.

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DENNIS R. BAKER

9 having been duly sworn, was examined and testified as
10 follows:

11

DIRECT EXAMINATION

12 QUESTIONS BY MR. KISER:

13 Q. Mr. Baker, if you would, state your name for
14 the Board, who you are employed by and in what capacity?

15 A. My name is Dennis R. Baker. I'm employed by
16 Equitable Production Company as Senior Landman.

17 Q. And your responsibilities do include the
18 land involved here and in the surrounding area and you are
19 familiar with Equitable's application seeking a pooling order
20 for EPC well number VC-4087, which was dated June 17, 1999?

21 A. Yes, I am.

22 Q. Is Equitable seeking to force pool the
23 drilling rights as depicted under Exhibit A to the
24

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1 application?

2 A. Yes.

3 Q. Does the location for Equitable well number
4 VC-4087, again, fall within the Board's order for the Roaring
5 Fork Coalbed Gas Field?

6 A. Yes, it does.

7 Q. Now, prior to the filing of the application,
8 were efforts made to contact each of the respondents listed
9 in Exhibit B and an attempt made to work out a voluntary
10 lease agreement made with each of the parties?

11 A. Yes.

12 Q. And what is the...Equitable owns drilling
13 rights in the unit involved here?

14 A. Yes. The interest leased to Equitable in
15 the gas estate is 99.30 percent. And the interest leased to
16 Equitable in the coal estate is 100 percent.

17 Q. Are all the unleased parties set out in
18 Exhibit B to the application?

19 A. Yes, they are.

20 Q. And subsequent to the filing of your
21 application, did you continue to attempt to reach an
22 agreement with any unleased respondents listed in Exhibit B?

23 A. Yes.

24

--

1 Q. As a result of those efforts have you
2 obtained any additional leases?

3 A. No, we have not.

4 Q. Based upon your testimony, what is the
5 interest of the gas estate that remains unleased at this
6 time?

7 A. .70 percent.

8 Q. And the coal estate was again is 100 percent
9 under lease?

10 A. Yes.

11 Q. Okay. And are the addresses set out in
12 Exhibit B to the application the last known addresses for the
13 respondents?

14 A. Yes.

15 Q. Are you requesting the Board to force pool
16 all unleased interest listed in Exhibit B to the application?

17 A. Yes.

18 Q. Okay. Are you familiar with the fair market
19 value of drilling rights in the unit involved here and in the
20 surrounding area?

21 A. Yes, I am.

22 Q. Could you advise the Board as to what those
23 are?

24

1 A. A \$5 per acre consideration, a five year
2 term, one-eighth of eight-eighths royalty.

3 Q. In your opinion, do these terms you've
4 testified to represent the fair market value of and the fair
5 and reasonable compensation to be paid for drilling rights
6 within this unit?

7 A. Yes.

8 JIM KISER: Mr. Chairman, we'd again ask that the
9 testimony regarding election options and the time periods in
10 which to respond to those options previously taken in 99-
11 07/20-0737 be incorporated into this hearing.

12 BENNY WAMPLER: They'll be incorporated.

13 Q. Mr. Baker, we do have conflicting claimants
14 in this unit. Do you request that any order provide that the
15 operator pay into an escrow account created by the Board all
16 costs or proceeds attributed to the conflicting interest
17 where they'll shall be held for the respondents benefit until
18 such funds can be paid to the party by order of the Board or
19 until any title defect or conflicting claim is resolved to
20 the operator's satisfaction?

21 A. Yes.

22 Q. And who should be named the operator under
23 any force pooling order?

24

--

1 A. Equitable Production Company.

2 JIM KISER: Nothing further of this witness at this
3 time, Mr. Chairman.

4 BENNY WAMPLER: Any questions of this witness from
5 members of the Board?

6 (No audible response.)

7 BENNY WAMPLER: Call your next witness.

8

9 ROBERT A. DAHLIN, II

10 having been duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 QUESTIONS BY MR. KISER:

14 Q. Mr. Dahlin, again state your name, who
15 you're employed by and in what capacity?

16 A. Robert A. Dahlin, II. I'm employed by
17 Equitable Production Company, as a Production Specialist.

18 Q. And you are familiar with the land involved
19 here and in the surrounding area?

20 A. Yes.

21 Q. And you're familiar with the proposed plan
22 of exploration for this unit?

23 A. I am.

24

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1 Q. What is the total depth of the proposed
2 well?
3 A. 1800 feet.
4 Q. What are the estimated reserves of this
5 unit?
6 A. 400,000,000 cubic feet.
7 Q. And are you familiar with the well costs for
8 the proposed well?
9 A. Yes.
10 Q. Has an AFE been reviewed, signed and
11 submitted to the Board as Exhibit C to the application?
12 A. Yes, it has.
13 Q. Was this AFE prepared by an engineering
14 department knowledgeable in the preparation of the AFE's and
15 knowledgeable in regard to well costs in this area?
16 A. Yes.
17 Q. And does this AFE represent a reasonable
18 estimate of the costs for the proposed well under the
19 applicant's plan of development?
20 A. It does.
21 Q. State for the Board at this time, what
22 the...both the dryhole and completed well costs are for 4087?
23 A. The dry hole costs are \$58,840; and
24

1 completed well costs of \$151,900.

2 Q. Do these costs anticipate a multiple
3 completion?

4 A. Yes.

5 Q. Does your AFE include a reasonable charge
6 for supervision?

7 A. Yes.

8 Q. In your professional opinion, will the
9 granting of this application be in the best interest of
10 conservation, the prevention of waste and the protection of
11 correlative rights?

12 A. Yes, it would.

13 JIM KISER: Nothing further of this witness at this
14 time, Mr. Chairman.

15 BENNY WAMPLER: Any questions from members of the
16 Board?

17 DENNIS GARBIS: I notice that you have the location
18 on the plat here...location of the proposed well is...is
19 almost on the edge there. Is there a particular reason for
20 that? You couldn't find a better place for it?
21 Inaccessibility or...?

22 DENNIS R. BAKER: Well, this...this particular
23 location was...was about the only place we could get it coal

24

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1 approved.

2 DENNIS GARBIS: I'm sorry, the only place...?

3 DENNIS R. BAKER: To get it coal approved. It had

4 to be coal approved for the coal company...the coal owner.

5 This was the only place that they would approve the location.

6 DENNIS GARBIS: Thank you.

7 BENNY WAMPLER: Any other questions?

8 (No audible response.)

9 BENNY WAMPLER: Do you have anything further?

10 JIM KISER: We'd ask that the application be

11 approved as submitted, Mr. Chairman.

12 BENNY WAMPLER: Is there a motion?

13 MAX LEWIS: I make a motion we approve it.

14 BENNY WAMPLER: Motion to approve.

15 MASON BRENT: Seconded.

16 BENNY WAMPLER: Motion is seconded. Any further

17 discussion?

18 (No audible response.)

19 BENNY WAMPLER: All in favor, signify by saying

20 yes.

21 (All members signify yes.)

22 BENNY WAMPLER: Opposed, say no.

23 (No audible response.)

24

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1 BENNY WAMPLER: You have approval. Thank you. The
2 next item on the agenda the Board will consider an appeal of
3 the inspector's decision. Thank you, Jim. Rendered as a
4 result of an informal fact finding conference 11399.

5 SANDRA RIGGS: I was looking at the AFE on the...on
6 the BC-4057 on the dryhole and the completed well cost.
7 There was just a question about...normally they match up.
8 But there's four different numbers there in the two columns
9 and we couldn't quite figure out why. I'm sorry.

10 ROBERT A. DAHLIN, II: Okay. Which...which well
11 number again?

12 JIM KISER: 4057. I'm sorry.

13 DENNIS GARBIS: Yeah, number...item number 26 on our
14 agenda.

15 JIM KISER: Okay.

16 ROBERT A. DAHLIN, II: What number?

17 DENNIS GARBIS: On page three.

18 ROBERT A. DAHLIN, II: Okay.

19 DENNIS GARBIS: Total lease and well equipment
20 \$52,000 versus...the gross amount's \$52,000, the net amount
21 is \$15,000 and then you have a \$183,000 versus \$54,000.

22 ROBERT A. DAHLIN, II: Should be the same
23 percentage. But I can see. They're just gross and net
24

1 amounts.

2 SANDRA RIGGS: We're looking at the gross amounts
3 for purposes of the testimony here. The net is---.

4 ROBERT A. DAHLIN, II: The net is Equitable's
5 interest. But the gross amount is the total amount. It just
6 indicates a less than 100 percent interest for our own in
7 house.

8 SANDRA RIGGS: The working interest.

9 ROBERT A. DAHLIN, II: Right.

10 JIM KISER: Right.

11 SANDRA RIGGS: Okay.

12 DENNIS GARBIS: Thank you.

13 SANDRA RIGGS: I'm sorry.

14 BENNY WAMPLER: That's all right. Continuing to
15 call the...the Appeal of the inspector's decision for
16 informal fact finding conference 11399 to David Roy
17 McClanahan, et al versus Consol, Incorporated. This is
18 docket number VGOB-99-07/20-0736. We'd ask the parties that
19 wish to address the Board in this matter to come forward at
20 this time, please.

21 GERALD GRAY: Good afternoon. I appreciate you all
22 accommodating my schedule this morning. Obviously, you have
23 plenty to do. So...

24

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1 BENNY WAMPLER: If you will, state your name for the
2 record, please.

3 GERALD GRAY: My name is Gerald Gray. I represent
4 David McClanahan and Kate McClanahan who are the surface
5 owners involved in this appeal.

6 MARK SWARTZ: Mark Swarz, David Miller and Les
7 Arrington for Consol.

8 BENNY WAMPLER: Wait until everyone gets settled in
9 here. Mr. Gray.

10 GERALD GRAY: The...this appeal results from an
11 informal fact finding conference that was held on April the
12 18th, 1999 at the office here in Abingdon. We...I
13 represented David and Kate McClanahan. We arrived there
14 after having filed objection to an application for
15 permit...actually three different applications. This would
16 be wells T-27C, D and E, which were sent to David McClanahan
17 as an owner. No notice or a copy of that application was
18 never sent to Mrs. McClanahan. She did appear at the hearing
19 and she did testify.

20 The application showed that all three wells...these
21 wells are in Buchanan County. They're right off of Route 460
22 in the...I guess they're in the Keen Mountain area. The
23 application themselves...the applications that were filed
24

1 showed that all three of these wells were on my client's
2 property. We filed an application...we filed an objection to
3 this application on the grounds that the proposed well
4 site...well sites, would unreasonably interfere with or
5 infringe with the right of the property owner to use...use
6 that property.

7 During the course of the informal fact finding
8 conference, we were presented with a claim by Consol that
9 their original application and notice had been in error.
10 That, in fact, only one of these wells, that would T-27E, was
11 located on the McClanahan's property. Now, subsequent to the
12 hearing, a revised...a permit revision with plat in tract by
13 identifications for the wells was filed...was mailed on May
14 7th, 1999. It was not...wasn't made or offered prior to the
15 date of that hearing. We went into the hearing prepared to
16 present our case to show that the wells...because of the
17 small size of my client's lot, because of its location on
18 Route 460, that we would be in a position to...that...that
19 drilling the wells there would simply prevent us from making
20 any use at all of this property as is indicated by the record
21 and the transcript from the hearing. The property was
22 accessible...not only accessible directly to Route 460. It
23 was under lease to McClure Concrete Company on a month to
24

1 month lease at that time. In addition, there's water and
2 sewer available on the property. So, we felt that it was a
3 very valuable piece of land that should not be interfered
4 with by the wells being drilled on that location.

5 The Director agreed with us with respect to one of
6 those wells. That was T-27E. With respect to the other two,
7 without a prior revision having been made before that date of
8 that hearing, he accepted the claims of Consol at that point
9 that the...that two of the wells, that is C and D, were not
10 located on my client's property.

11 The petition for appeal and what...in the decision
12 of the Director, he acknowledged that he did not have the
13 power or the jurisdiction to determine ownership of land or
14 conflicts in terms of boundary lines. The...nevertheless,
15 despite that recognition of the limitations on his power and
16 authority, he went forward and made the decision that
17 the...two of those wells, C and D...T-27 C and D were not
18 located on their property.

19 The petition for appeal was brought asking this
20 Board to defer any final approval of the application until
21 there has been a determination by a proper Court as to the
22 boundary line, as well as the ownership, of the land in
23 question; and I would reiterate my position before the Board

24

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1 here. I do not believe that this Board has the authority to
2 litigate or...and decide title issues, boundary line disputes
3 and those...those sorts of things; and the proper course for
4 this Board to take would be to simply defer approval of the
5 permit application and let this be resolved in the Courts and
6 then be bound by whatever decision the Court makes.
7 It...it...to me, it's useless for the Director to acknowledge
8 that he doesn't have the power to make such a decision and
9 then proceed to make it anyway. So, I would ask this Board
10 to...to simply defer approval and let this matter be
11 litigated in...in the Courts. We're going to rely on the
12 evidence that was presented and is show in the transcript. I
13 assume there's been a transcript filed with the Board here.

14 BENNY WAMPLER: We have it. (Inaudible).

15 GERALD GRAY: We'd rely on that.

16 BENNY WAMPLER: All right. Any questions at this
17 time from members of the Board?

18 (No audible response.)

19 BENNY WAMPLER: Mr. Swartz.

20 MARK SWARTZ: I would summarize what happened at the
21 hearing and you have the transcripts, so you have a sense of
22 what happened. But essentially, when my clients first
23 contacted Mr. Gray's client, they asked...had identified him

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1 as a potential owner, and they said, this is where we're
2 thinking about putting the wells. Where's your property? He
3 indicated to them that he had the whole area. They took him
4 at his word. When they located...when the objections were
5 filed and they were in the process of preparing the plats,
6 they determined that he owned a tiny little triangle of land
7 as it turns out, and he did not own the entire area; and that
8 actually two of three wells were not on his property.

9 And essentially at the hearing, we brought maps.
10 David, who is here today, did the maps, did the title work
11 and he has done more work since then. I have some additional
12 maps I thought I would share with you today. As long we have
13 done the work, you might as well see that we have. But
14 essentially our position was that two of three wells were not
15 on the McClanahan property. Mr. Fulmer accepted their
16 arguments that the one well that was proposed to be on their
17 property would, in fact, impact on their interest adversely
18 to an extent that he felt he should deny the permit
19 application, and he did.

20 With regard to the...as I understand his ruling,
21 with regard to the two wells that were not located on their
22 property, he simply held that we had certified the plats and
23 certified the location and that the department was bound to
24

1 accept that. We weren't required to make a certification,
2 but having made a certification as to their location, the
3 department was required to accept that certification of their
4 right to operate on that property, and he was prepared to do
5 that and simply punted, ultimately, I guess...you know, if
6 there is a title dispute...that title dispute to the...to the
7 Court if the McClanahan's chose to...chose to pursue it.

8 So, essentially what it boiled down to was a
9 contention that frankly, two of the three wells were not
10 on...not on their land. We have since the hearing prepared
11 some additional maps, which I would like to share with you
12 all just to sort of follow through on what we had talked
13 about in front of Mr. Fulmer.

14 The first map places the tract out of which the
15 McClanahan was taken in relation to Route 460. Route 460 is
16 depicted in red and the tract, I think, it was...David, was
17 it a grandmother? It was a relative of Mrs. McClanahan.

18 DAVID MILLER: Ethel Fleming was his relative...it
19 was a relative of Mrs. McClanahan.

20 MARK SWARTZ: Mrs. McClanahan's---.

21 GERALD GRAY: It's her mother.

22 MARK SWARTZ: She owned this larger tract that was
23 platted on here and you can see that there is a portion on it

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1 that intercepts Route 460 and the part that we're talking
2 about is the little tiny triangle to the East of 460 that's
3 shown on your map that I've just...just passed out. We also
4 have prepared, and that's Exhibit One, we also have prepared
5 a total map on which David has overlaid the adjoining tracts
6 and depicted again on Route 460.

7 And what is depicted on this exhibit, Exhibit
8 Three, the little yellow triangle is the McClanahan tract
9 that Mr. Gray's clients...at the hearing, in front of Mr.
10 Fulmer, I asked them what deed they were claiming under,
11 because I felt it was important to determine...be certain
12 what it was and they identified the deed that describes the
13 triangle, or conveys the triangle on the...on the East side
14 of Route 460. So, they acknowledged at the hearing, and
15 you've got the transcript, I'm sure you saw that reference;
16 and this...this is how that deed description plats. This
17 also locates the two wells as red dots that Mr. Fulmer
18 granted permit applications and you can see that they're, you
19 know, near by, but not on the property and it...what it also
20 does, is it takes the...the adjoining Hugh McRae tract, the
21 Oakwood Hydraulics tract and a Youkon Pocahontas tract, and
22 it kind of fits them all together to show closure. That the
23 plats do, in fact, work and do come together. And then,

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1 we've done a...we sort of focused in on the area that we're
2 talking about and this is Exhibit Two.

3 On Exhibit Two, again, locates the...locates the
4 McClanahan tract, which is yellow. It locates the permitted
5 wells. It locates the portion of the larger tract that this
6 came out of and the dotted red lines are the angles taken
7 from the deed description that the McClanahans claim under.
8 As we fit the property together, we think it fits the way
9 we've depicted it in the solid lines, but we also platted the
10 angles taken out of the...out of the deed of Mr. Gray's
11 clients so that we could see what else fell in relation to
12 the permitted wells.

13 The last exhibit that I would share with you
14 is...we've called it Exhibit Four, but it's really a State
15 Highway map from 1969 that was done when 460 was being
16 constructed, I think. And we had these State Highway maps at
17 the hearing in front of Mr. Fulmer and referred to them as
18 well. If you go over to the...to the right hand side of the
19 map, there's the phrase, Ethel...or the words, Ethel Fleming,
20 and that you'll see catches the triangle tract very...you
21 know, compares very favorably to the work that we done. I
22 think we have done and just offered to simply suggest that,
23 you know, someone else without an interest in the outcome

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1 here has platted this very close to what we have.

2 The point of the further mapping is simply to
3 continue to drive home the point that the two permits that
4 Mr. Fulmer issued simply are not on their property and that
5 we have a basis to certify that. Okay, not that we're right
6 or we're wrong, but this is our basis to certify to the
7 department that these well locations are not on the
8 McClanahan tract; and the other basis, of course, is the deed
9 that they claim they do. I would like to have...if I could
10 have David comment a little bit with regard to Exhibit Two.
11 I think the rest of things sort of speak for themselves. But
12 if we could have David sworn.

13 (Witness is duly sworn.)

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19 DAVID MILLER

20 having been duly sworn, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 QUESTIONS BY MR. SWARTZ:

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1 Q. David, who do you work for?

2 A. Price Engineering.

3 Q. And does Price Engineering have a

4 contractual arrangement with Pocahontas Gas Partnership or

5 Consol?

6 A. Yes, they do.

7 Q. Okay. And are you provided on a contract

8 basis to do work for them?

9 A. Yes, I am.

10 Q. Okay. Were...were you involved in the

11 preparation of the exhibits that we've shared with the Board

12 today?

13 A. Yes, I was.

14 Q. Did you actually go out and visit the

15 property?

16 A. Yes, I did.

17 Q. Okay. Could you tell the Board the things

18 that you found on the ground that helped you prepare Exhibit

19 Two?

20 A. After the hearing in April, I made a visit

21 to the property to see if I could find any more information.

22 I found a...if you'll notice on the plat marked Exhibit Two,

23 I found a roof bolt that had orange paint on it that somebody

24

1 had put there before to signify a property corner. I had the
2 field crews locate that. You'll notice the blue dots coming
3 up the side of the plat here. That's a painted line that
4 Georgia Pacific....they paint their boundary lines. I found
5 a set stone that Georgia Pacific, or someone had set with
6 a...it's a very definable set stone with a big circle in the
7 top of it and the arrow...outside boundary calls for a spruce
8 pine on top of the hill and we also found a spruce pine with
9 three hack marks.

10 Q. And that deed...and that spruce pine with
11 three marks was in the Fleming deed?

12 A. Right.

13 Q. A carved---?

14 A. No, hers...hers was here.

15 Q. Okay.

16 A. Down here.

17 Q. Okay. It was in a Georgia Pacific deed?

18 A. Right.

19 Q. Okay. But that allowed you to at least
20 establish this corner?

21 A. It helped me to establish. I found two
22 known points on the ground and plus the roof bolt. So, it
23 helped us to project this line through...you know, to at
24

1 least tell where the property was at. We found enough
2 physical evidence on the ground to really nail down where we
3 thought the piece of property was at. And also like I said,
4 the broken line is in, you know, shows how it would be if we
5 used the description in the McClanahan deed which makes it
6 even more favorable for us.

7 Q. Did you also have access to the Oakwood
8 Hydraulics' deed and was there any information in that deed
9 that was of assistance?

10 A. Yes, we found...we had the Oakwood
11 Hydraulics' deed that fit in really well with the...with the
12 deed, the southern line of the McClanahan tract and also the
13 Oakwood Hydraulics' deed had coordinates on it that fit along
14 the same bearings as the line that we have on the plat.

15 Q. And was this a map...Exhibit Two, a map that
16 you have prepared to depict where the well...the well that's
17 been drilled and the other well that's been permitted are in
18 relation to the McClanahan tract?

19 A. Yes, it is.

20 Q. Okay. That's all I have of David.

21 BENNY WAMPLER: Questions from members of the Board?

22 (No audible response.)

23 BENNY WAMPLER: Mr. Gray, do you have any questions

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1 for him?

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CROSS EXAMINATION

4 QUESTIONS BY MR. GRAY:

5 Q. Mr. Miller, I believe you testified at the
6 informal fact finding conference that your crew had been
7 unable to locate any evidence of prior surveys, isn't that
8 correct?

9 A. That's correct.

10 Q. And you can't tell the Board here when that
11 roof bolt that you saw...when that roof bolt was put in or
12 who put it there?

13 A. Well, actually the first time that the crews
14 went out, there was a grown up weeded area. I looked through
15 my survey notes and actually the roof bolt was found in some
16 of our old survey notes that match...that matches the exact
17 coordinates of the coordinates that we found after the
18 hearing that was located prior to the meeting that I wasn't
19 aware of.

20 Q. All right. And you don't know who put that
21 roof bolt there?

22 A. I have no idea.

23 Q. Or how long its been there?

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1 A. No.

2 Q. The...the original survey description
3 contained in the Fleming deed from the larger parcel, how old
4 was that original survey? Do you know?

5 A. It's pretty old. I don't know the exact
6 date. I don't have the deed in front of me.

7 Q. And it would not surprise you, as a
8 surveyor, to see that there would be some discrepancy if you
9 were to take the metes and bounds description from that deed
10 and just put it on a plat between what that calls for and
11 what's on the ground today?

12 A. Right.

13 Q. And, in fact, if you take that point that
14 you've located and rotate it ever so slightly, we end up with
15 one of those wells on that property, isn't that true?

16 A. No, sir, it wouldn't rotate that far.

17 Q. Okay. How far would it rotate?

18 A. Well, I'm showing both rotations on the
19 maps.

20 Q. But what you're showing is in the red
21 dots...that's what I'm looking at, the red dashes, as I
22 understood your testimony, are plotted from the deed
23 description itself?

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1 A. Right.

2 Q. Okay. And that's...I'm making reference
3 to...explain to the Board, please, what...what principals are
4 involved in determining the difference between an older
5 survey and what one finds from using...doing a survey today?

6 A. Well, if you'll see on this plat, the
7 actually physical evidence that we found on the ground
8 doesn't...you know, like you're correct over...over the
9 years, surveys can vary by an angle or degree or so, may
10 sometimes more, sometimes less. If you'll notice on the
11 plat, the physical evidence that we found on the ground, the
12 bearing difference is very minimum. The distances are off
13 some, but the bearing distance is very minimum. Not enough
14 to swing that up to get that well on a property.

15 Q. All right. And part of the difference is,
16 as I understand it, has to do with the rotation of the earth
17 and that sort of thing?

18 A. Oh, certainly. In other words, magnetic
19 North.

20 Q. Yes.

21 A. It varies. But what magnetic North does
22 it'll...it'll vary one way and then it'll come back and it
23 will ride the other way and it will come back. So, what

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1 magnetic North, you know...there's not that big of a
2 difference.

3 Q. But at any rate, you're not prepared to tell
4 this Board here what...what roll magnetic North...true
5 magnetic North played in your effort to locate this property
6 on the ground?

7 A. Well, magnetic North doesn't affect you a
8 great deal anyway when you find physical evidence on the
9 ground. Magnetic North is something a guideline to go by
10 when you start a survey, but you physical evidence on the
11 ground. That over...overrules bearings and distance.

12 Q. The blue dots that we see here, did...did I
13 understand you to say...or did you, in fact, say that the
14 blue dots there were part of the painted line?

15 A. A painted line, yes.

16 Q. From Georgia Pacific?

17 A. I assume Georgia Pacific.

18 Q. All right. And why do you assume that?

19 A. That's how they commonly mark their property
20 lines.

21 Q. Did you check with Georgia Pacific to see
22 if, in fact, they had marked this line here?

23 A. We have discussed with them, not
24

1 particularly on this line, but we have discussed the...how
2 they marked their lines in the past and one our employees
3 used to work for Georgia Pacific and he said that's how they
4 mark their lines and he was pretty certain that the set stone
5 was their set stone.

6 Q. The...so, we have the set stone there on the
7 left just underneath the S-67 and then we have some blue dots
8 in the center of that line with some blue dots off to the
9 right of that line?

10 A. Yes, sir.

11 Q. All right. And these are supposed to
12 indicate the Georgia Pacific line?

13 A. Yes, sir.

14 Q. And does the Georgia...what...what's the
15 call for the Georgia Pacific line? Is it the same as we see
16 written here?

17 A. It's a common within a few degrees.

18 Q. But, in fact, from one point to another,
19 it's a straight line rather than what we see depicted on
20 the...on the drawing here?

21 A. Well, what you see on the blue dots is...is
22 someone taking a compass and going out and painting between
23 the set stone and another corner and painting trees

24

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1 along...they've painted the closest tree to the line. They
2 didn't necessary say that was, you know, dead on it. They're
3 saying the set stone is our corner and we're going to paint
4 between our two corners as close as we can.

5 Q. All right. So...so, what you're telling the
6 Board is that these blue dots don't indicate the lines, it
7 just indicates where some trees where that someone painted
8 on?

9 A. It indicates where Georgia Pacific thinks
10 their line is. That and in the proximity and the set stone
11 confirms that.

12 Q. And who set the set stone?

13 A. I'm assuming Georgia Pacific.

14 Q. Is it called for in any of the deeds?

15 A. No, it calls for a white oak, but that white
16 oak is an call. The set stone fits and there's some white
17 oaks in the area. The set stone fits relatively to what the
18 deed calls for.

19 Q. So, you don't know where that...the white
20 oak that was called for in the coordinates?

21 A. There's a white oak just above the set
22 stone.

23 Q. Did it have any marks on it to indicate that
24

1 it was a corner tree?

2 A. No, sir.

3 Q. How big is the tree?

4 A. I'd say thirty-six inches. It's an old

5 white oak.

6 Q. All right. That's all the questions I have.

7 BENNY WAMPLER: Any questions from members of the

8 Board? Do you have anything further?

9 MAX LEWIS: How close is their line to where this

10 first well is here?

11 DAVID MILLER: Where's your scale, Les?

12 (Les Arrington hands David Miller his scale.)

13 DAVID MILLER: From the center of that well to the

14 line...on the center---.

15 MAX LEWIS: I'm talking about the edge of the---.

16 DAVID MILLER: Well, this dot...you can't really

17 depict that because the dot is going to be a lot higher than

18 what---.

19 MAX LEWIS: Yeah, I know that.

20 DAVID MILLER: From the center of that dot to the

21 line is about 40 feet and that well hadn't been drilled.

22 So...

23 BENNY WAMPLER: Other questions?

24

1 (No audible response.)

2 BENNY WAMPLER: Do you have another witness?

3

4 LES ARRINGTON

5 having been duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 QUESTIONS BY MR. SWARTZ:

9 Q. Mr. Arrington.

10 A. Yes.

11 Q. Would you state your name?

12 A. Leslie K. Arrington.

13 Q. I want to remind you that you're still under
14 oath.

15 A. Yes.

16 Q. Have...did you file revised plats with Mr.
17 Fulmer's office?

18 A. Yes, we have.

19 Q. And have you, by the filing of those plats,
20 certified that the two wells that we're talking about today
21 are, in fact, off the McClanahan property?

22 A. Yes, we have.

23 Q. And does the basis of your certification in
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1 that regard and others from your company, because obviously
2 the plat is signed by someone else, but is the basis for that
3 certification, the work that David and others have done to
4 locate the McClanahan tract on the ground?

5 A. Yes, it is.

6 Q. That's all I have.

7 BENNY WAMPLER: Questions from members of the Board?

8 (No audible response.)

9 BENNY WAMPLER: Mr. Arrington, you are aware that
10 granting of a permit doesn't grant you right of entrance?

11 LES ARRINGTON: Yes, we are.

12 BENNY WAMPLER: Do you have any questions of that
13 witness?

14 GERALD GRAY: Yes.

15

16

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18 CROSS EXAMINATION

19 QUESTIONS BY MR. GRAY:

20 Q. Mr. Arrington, the...the revised plat that
21 you filed on May 7th with the Board, did you ever submit an
22 amended application and provide notice as...as the law
23 requires?

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1 A. I...I filed the revised plats with Mr.
2 Fulmer and I believe I also mailed yourself and your client a
3 copy.

4 Q. So, you're...or what you're telling us you
5 mailed the application for...an amended application for a new
6 permit to all the parties set forth in the original
7 application?

8 MARK SWARTZ: I'm going to object to the assumption
9 of your question that he had filed a new application. He's
10 told you what he filed. He filed the plats. You're arguing
11 with him that he was supposed to file an application. I'm
12 objecting to that.

13 GERALD GRAY: No, I'm simply asking him a question,
14 Counsel. Object away.

15 Q. And your answer, sir.

16 BENNY WAMPLER: Let Les answer the question.

17 A. We filed amended...revised plats as
18 requested during the informal fact finding hearing.

19 Q. And so that verifies there was no...no
20 amended application and new notice, correct?

21 A. I suppose, yes.

22 Q. Now, the...your counsel asked you if you,
23 with these revised plats, if that constituted your
24

1 certification that the wells were where you claimed them to
2 be, correct?

3 A. Our revised?

4 Q. Yes.

5 A. Yes, they did.

6 Q. And didn't you make that same certification
7 when you presented the first application that the wells were
8 on the property that you claimed that they were located on?

9 A. Well, we did. But we continue to do our due
10 diligence to make sure that we're as accurate as we can be.

11 Q. All right. That's all the questions I have.

12 BENNY WAMPLER: Questions from members of the Board?

13 (No audible response.)

14 BENNY WAMPLER: Mr. Fulmer, do you have anything
15 that you'd like to say?

16 TOM FULMER: In regards to...to the decision it's
17 pretty much self explanatory. What I do have in here, I
18 would emphasize to the Board, that when I do make a decision
19 in....there's property disputes and line disputes granted
20 that my decision is not based up disputes of property because
21 that occurs everyday in every permit I get as to who owns
22 what. It's basically...this decision involves whether or not
23 there was clear understanding that these wells were not or

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1 was on the McClanahan property; and to certain testimonies at
2 the informal hearing, it was indicated that possibly two of
3 the wells were not on the McClanahan property. There was
4 some discussion again about alternative locations and there
5 was not an alternative given by either parties. So, taking
6 those facts in hand, that's where the decision came from...my
7 decision in these cases involved what was determined.

8 BENNY WAMPLER: Do you have any summary remarks?

9 GERALD GRAY: Basically, I would reiterate the point
10 I tried to make in my opening here. The law is quite clear
11 that the director does not have the jurisdiction or the power
12 to resolve a boundary line dispute, particularly in the
13 context and the ownership dispute. Particularly in the
14 context of what we have here where the...my clients had
15 notice of an application that showed all three wells are
16 located on their property. They've testified that the well
17 sites as identified on the land...as identified on the land
18 are, in fact, a property that they own. That they've
19 controlled for a number of years even though they didn't have
20 a deed for it until 1991 and then a lease in 1992. They've
21 filled that area and improved it back in 1982. There was, in
22 fact, according to the record, there was a concrete plant
23 located on...in the same area which the wells are proposed to

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1 be drilled. So, we think there's a genuinely bonafide
2 dispute about the ownership of this property.

3 The...the lack of notice, and I understand that
4 it's sometimes difficult for applicants such as Consol to
5 actually go up and look at a deed for ownership and determine
6 that the deed is in the name of a husband and a wife rather
7 than just the husband. That's certainly something they have
8 to do. They...but we didn't raise that initially. But the
9 reason I raised it in the petition for appeal is because
10 there's been an amendment made in the...in the map that we
11 didn't have notice of.

12 So, we think that...that the director errored in
13 his decision. We think that the mere fact that an applicant
14 certifies that the wells are where they're located and they
15 do have a right of entry, isn't sufficient particularly when
16 there's a genuine issue of ownership and boundary line. The
17 proximity of these wells is close enough to my client's
18 property that will similarly deprive them of the use of this
19 property; and we would ask that the decision of the director
20 be reversed.

21 BENNY WAMPLER: Mr. Swartz.

22 MARK SWARTZ: There has never been any evidence
23 offered to suggest that there's something wrong with this.

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1 At the hearing they said this is the deed we claim under.
2 This is how it plats. It's a 120 by 80 by 90. It's .0800 of
3 an acre. You know, I mean, it's a tiny little triangle.
4 There was no evidence at the hearing that the description was
5 wrong. This is how it plats. We've had it surveyed. This
6 is how we locate our corners. There's absolutely nothing.
7 The entire...what you're hearing today, you had it wrong when
8 you filed your application and that's evidence of title. I
9 mean, forget it. You know, we platted the maps as we
10 understood them in the beginning. Got the objections. Got
11 out there and did the work. This is our plat. This is our
12 reconstruction of what...how the land lays on the ground.
13 You've gotten absolutely nothing at all from your appelles.
14 Zero.

15 And the only issue, I think, in front of the Board
16 is whether or not my client had a good faith basis to certify
17 that they had a right to be on the surface of the property
18 that they were seeking a permit from when they were in front
19 of Mr. Fulmer; and the only reason I'm offering these maps to
20 you is to show that when Mr. Arrington files the application,
21 and files the amended plats, and when Mr. Morgan signed off
22 of these plats, they had a good faith basis based on the work
23 that David has done and others have done to make that

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1 certification and that's...you know, that's the purpose of
2 what I've offered to you today. And I...you know, I read Mr.
3 Fulmer's decision, although with apologies to him, it's
4 somewhat confluted because these cases get very confusing, as
5 a decision that we had a good faith basis to make the
6 certification and he has to take our word for it, if it
7 appears that we had a good faith basis to make the
8 certification, but with regard to the well that we concede
9 was located on the McClanahan tract, he felt that it would
10 impinge on their rights to use that tiny little piece of
11 property and he denied the permit and we have not appealed
12 that. We're living with that decision. So, that's my
13 concluding remarks.

14 BENNY WAMPLER: Okay. Thank you. Any questions
15 from members of the Board. Mr. Garbis.

16 DENNIS GARBIS: Yeah, I do have a question. You
17 say...is...do you already have a permit for that? I mean,
18 you already have a permit for those?

19 MARK SWARTZ: We had two permits. Right.

20 DENNIS GARBIS: Why...why do you have two wells so
21 close together?

22 MARK SWARTZ: It's a longwall panel and there are
23 offsets. Les, go ahead and---.

24

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1 LES ARRINGTON: It's location driven. I mean,
2 we...we have so many wells we have to get in a certain
3 distance and that's the reason there's two wells on one site.
4 We will try our best to use the smallest amount of area as
5 possible to get the wells in and that's what we've done
6 there, put two wells on one site. However, in this case, we
7 have worked it out to where we only have to have one well
8 there at this point and we're only going---.

9 DENNIS GARBIS: There's no other available site or
10 there's no other location that could accommodate your needs?

11 LES ARRINGTON: No, sir, there was not.

12 TOM FULMER: I just want to proffer that a little
13 bit because I didn't go any...a little bit further. Was the
14 fact that the wells were being drilled directionally into the
15 panels.

16 DENNIS GARBIS: Oh, okay.

17 TOM FULMER: Okay. And that these were going South
18 of this location and what you have South of the location is
19 460 and what you've got above it is a sheer mountain that
20 goes straight up and that was evidence that was presented in
21 that regard, if that helps you any.

22 DENNIS GARBIS: Uh-huh.

23 BENNY WAMPLER: Other questions?

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1 MAX LEWIS: If you're going...you said you were just
2 going to drill one of these wells?
3 MARK SWARTZ: It's already drilled.
4 MAX LEWIS: It's already drilled?
5 MARK SWARTZ: The northern one is drilled.
6 MAX LEWIS: And you don't intend to drill any more?
7 MARK SWARTZ: Not at this point.
8 MAX LEWIS: Not at this point?
9 MARK SWARTZ: So, we've got a permit, but we don't
10 plan on drilling. Isn't that what you said?
11 LES ARRINGTON: That's correct. At this point, we
12 only need one well there.
13 MAX LEWIS: Did you drill the one the closest to
14 the---?
15 LES ARRINGTON: No, the furthest away.
16 MAX LEWIS: The furthest away?
17 LES ARRINGTON: Yes, sir.
18 MAX LEWIS: How far is it away from the McClanahan
19 property?
20 LES ARRINGTON: We'll have to...we'll have to scale
21 that distance again.
22 MAX LEWIS: You said that other one was 40 feet,
23 approximately 40 feet.

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1 MARK SWARTZ: Do you need your glass...I'd better
2 give it to David.

3 DAVID MILLER: Approximately 80 feet.

4 MAX LEWIS: 80 feet. Yeah, but this one is 40 feet.

5 MARK SWARTZ: To the center.

6 MAX LEWIS: Yeah.

7 DAVID MILLER: To the center of it.

8 (Dennis Garbis and Sandra Riggs confers among
9 themselves.)

10 DAVID MILLER: Because if you went by that circle,
11 where they have to draw the circle, sure enough, that circle
12 is 30 feet in diameter.

13 MAX LEWIS: Yeah.

14 DAVID MILLER: So, I had to go to the center of it
15 get a accurate...because you're looking at a well head that's
16 not, you know, this much.

17 MAX LEWIS: Yeah, I know.

18 BENNY WAMPLER: Other questions?

19 DENNIS GARBIS: Let me ask a question---.

20 MAX LEWIS: How far are you from the edge of 460?

21 DAVID MILLER: What we...what we're showing on here
22 is the right-of-way line for 460. The actual road is further
23 over. We're about...it looks about 25 feet...25 to 30 feet
24

1 from the right-of-way line which puts us even further from
2 the asphalt edge.

3 BENNY WAMPLER: Mr. Garbis.

4 DENNIS GARBIS: Is the northernmost well already
5 drilled?

6 MARK SWARTZ: Yes.

7 DENNIS GARBIS: The one South of that...80 feet
8 South has not been drilled?

9 MARK SWARTZ: Well, 40 feet South has not been
10 drilled. What David is suggesting is they're about 40 feet
11 apart.

12 DENNIS GARBIS: Okay. And about 80 feet from---?

13 MARK SWARTZ: The furthest one---.

14 DENNIS GARBIS: ---plus or minus from this property
15 line?

16 MARK SWARTZ: The northernmost one is about 80 feet
17 from the closest property line.

18 BENNY WAMPLER: The first...the first one you come
19 to, he's saying it's 40 feet to the center.

20 DENNIS GARBIS: Right. Right. Yeah. So,
21 this...this is....from here to here is roughly---?

22 BENNY WAMPLER: About 80 feet.

23 DENNIS GARBIS: And what relief right...what relief

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1 are you seeking? What do you want? What is your---?

2 GERALD GRAY: Well, we don't...we don't believe that
3 the director has the authority to determine the boundary line
4 or the ownership of the property. The...that we went there
5 prepared to present evidence on the application that had been
6 filed which showed that all three wells are to be on my
7 client's property. The director acknowledged that he did not
8 have the authority to determine boundary line dispute and
9 then proceeded to do exactly that.

10 So, we...we believe that...that this either needs
11 to be...we believe...I believe that the Board ought to simply
12 defer making a ruling on the application and let...let this
13 boundary line dispute or ownership be litigated.

14 DENNIS GARBIS: But the well has already been
15 drilled.

16 GERALD GRAY: Yes.

17 DENNIS GARBIS: I have disconnect here. If the well
18 is already drilled---.

19 GERALD GRAY: Well, I wasn't aware that the
20 well...the well had already been drilled until it was just
21 announced here today.

22 DENNIS GARBIS: Uh-huh.

23 TOM FULMER: Well, you know, since it's my decision
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1 that we're dealing with, then you've got to think about the
2 process, and even though it had been on the McClanahan
3 property, I would have ruled that it infringed upon their
4 rights no matter if it was on there or not. So, that would
5 have been a ruling on that...and being connected in whether I
6 determined the property line, it is (inaudible).

7 SANDRA RIGGS: I think the controlling statute is---
8 .

9 MAX LEWIS: If it had been infringed---.

10 SANDRA RIGGS: ---45.1-361-35(B4).

11 MAX LEWIS: If it would infringe up on their use of
12 their property.

13 SANDRA RIGGS: 35(B4), says "the only objections to
14 permit, or permit modifications, which may be raised by
15 surface owners are: and four is; that the location of the
16 coalbed methane well, or the pipeline, will unreasonably
17 infringe upon the surface owners use of the surface provided,
18 however, that a reasonable alternative site is available
19 within the unit and that the granting of the objection will
20 not materially impair any right contained in an agreement
21 valid at the time of the objection between the surface owner
22 and the operator or their predecessors or successors". And
23 my understanding is, there's...there is no agreement between
24

1 the surface owner. So, we're talking about the first part of
2 the however and that is whether there is a reasonable
3 alternative site available.

4 MARK SWARTZ: Well, and you're talking about
5 infringe. I mean, we're certifying that it's somewhere else.

6 SANDRA RIGGS: True.

7 MARK SWARTZ: Having made that certification, we're
8 saying we have a right to operate on that property and they
9 don't own it. I mean, you know, if he really felt as
10 strongly, and his clients did, about what you're hearing
11 today, we go to Court for injunctions all the time to
12 exercise our rights that we claim we have. If they felt that
13 strongly that they own this property, they could have gone to
14 Court and gotten an injunction, or tried to get an
15 injunction. I mean, it's not like the...that their only
16 remedy is in front of you all. And, you know, my...they are
17 not without other remedies that they could have used if...if
18 they felt they own this adjoining tract; and where I'm coming
19 from is, how can something you do on somebody else's
20 property, and we're certifying it was somebody else's
21 property, have an impact on their use of their property. I
22 mean, when we're done, it's going to be a little tiny thing
23 coming out of the ground. It won't even cast a shadow on

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1 their land and if they contend they've got a property issue,
2 they need to get to Court about it and they are still going
3 to have an opportunity to do it. And all I'm here on is, we
4 have certified to you all and we have shown a good fait basis
5 for that certification, I think you're bound by it, and I
6 think Mr. Fulmer was bound by it. On the one where we
7 certified that we were on their property, he concluded with a
8 tiny piece of ground like that, it would have, you know, had
9 a significant impact on their property and he wasn't going to
10 grant the permit and he didn't.

11 BENNY WAMPLER: Now, wait..let's don't---.

12 MARK SWARTZ: And I really can't argue with that.

13 BENNY WAMPLER: Let's don't open up for additional
14 argument here. We've got the question answered, I think.
15 Any other questions?

16 (No audible response.)

17 BENNY WAMPLER: Is there a motion?

18 MASON BRENT: Mr. Chairman, I think, I would have to
19 move that we uphold Mr. Fulmer's decision on the basis that
20 he's been provided certification that this well is not on the
21 McClanahan property. I've not seen any certification that
22 tells me otherwise. On that basis, I think, I'd just have to
23 be in support of the inspector's decision.

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1 BENNY WAMPLER: I have a motion to support the
2 inspector's decision. Is there a second?

3 DENNIS GARBIS: For more discussion, I mean,
4 particularly at this point the well is drilled. Is it a 100
5 percent complete?

6 LES ARRINGTON: Yes, it is.

7 MARK SWARTZ: I think so.

8 LES ARRINGTON: Yes, it is.

9 GERALD GRAY: Do you have your (inaudible) up there
10 and everything?

11 LES ARRINGTON: Gone...it's been removed. The site
12 has been replanted. The well...the fence is around the well.
13 I mean---.

14 MARK SWARTZ: We have a video if you want to...if
15 you want to see it.

16 MAX LEWIS: When you drill...is some of this
17 property around that well been damaged by mining and
18 drilling?

19 LES ARRINGTON: I'm sorry.

20 MAX LEWIS: Has some of the property around this
21 location been damaged by mining?

22 LES ARRINGTON: Around this well? No, sir.

23 MAX LEWIS: Or close to the well?

24

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1 LES ARRINGTON: As far as mining goes, I work on the
2 gas end.

3 DENNIS GARBIS: I second.

4 BENNY WAMPLER: Motion is seconded. Any further
5 discussion?

6 (No audible response.)

7 BENNY WAMPLER: All in favor signify by saying yes.
8 (All members except Max Lewis signify yes.)

9 BENNY WAMPLER: Oppose say no.
10 (Max Lewis signifies no.)

11 BENNY WAMPLER: Three yes and a no. It's up held.
12 Thank you.

13 MARK SWARTZ: Thank you.

14 BENNY WAMPLER: That concludes the agenda items
15 today. Mr. King did ask me...before the Board gets gone,
16 asked me to consider for ...he has a conflict this month and
17 every other month and he asked that, starting September, if
18 we would consider an alternate date, if we keep it the third
19 week. Alter...alter...is there an alternate day that third
20 week that would be better? I told him that we couldn't for
21 August because, you know, that starts messing with all the
22 agenda items. Is there a day...yeah, I was trying to keep it
23 around the same week because it starts interfering with other
24

1 kinds of schedules. On third Wednesday? Wednesday?

2 MASON BRENT: Sure. The Wednesday, the day after

3 the normal day.

4 BENNY WAMPLER: Yes.

5 DENNIS GARBIS: Actually that's better for me.

6 BENNY WAMPLER: Is it?

7 DENNIS GARBIS: Uh-huh.

8 BENNY WAMPLER: All right. You got that?

9 TOM FULMER: You want to move it to Wednesday?

10 BENNY WAMPLER: Not next month.

11 TOM FULMER: Would start in September.

12 BENNY WAMPLER: Starting in September.

13 TOM FULMER: Okay. Mr. Chairman, next month we will

14 be back here because we could not get the college.

15 BENNY WAMPLER: Okay. Thank you. That...unless

16 there's anything from the Board members, that concludes

17 today's agenda.

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19

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21 STATE OF VIRGINIA,

22 COUNTY OF WASHINGTON, to-wit:

23 I, SONYA MICHELLE BROWN, Court Reporter and Notary

24

1 Public for the State of Virginia, do hereby certify that the
2 foregoing hearing was recorded by me on a tape recording
3 machine and later transcribed by me personally.

4 Given under my hand and seal on this the 11th day
5 of August, 1999.

6 NOTARY PUBLIC

7
6 My commission expires: August 31, 2001.